

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

AGREEMENT FOR PROFESSIONAL SERVICES

WITH *DANNENBAUM ENGINEERING COMPANY – MCALLEN, LLC*

PROJECT: *Levee System Improvements within Hidalgo County, Texas*

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THE STATE OF TEXAS §
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COUNTY OF HIDALGO §

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made by and between **HIDALGO COUNTY DRAINAGE DISTRICT NO. 1**, acting herein by and through the **BOARD OF DIRECTORS**, hereinafter called the “**Owner**”, and **DANNENBAUM ENGINEERING COMPANY – MCALLEN, LLC**, professional engineers of McAllen, Texas, hereinafter called the “**Engineer**”.

WITNESSETH:

WHEREAS, the **Owner** recently completed Phase I of the Hidalgo County Drainage District No. 1 Master Drainage System (“**MDS**”), which, under a separate agreement, required approximately twenty years to manage and perform the planning, preliminary engineering, final design and construction of the facilities for Phase I of the **MDS** and completed a master plan for required drainage projects within Hidalgo County, identifying the levee improvements within Hidalgo County as priority projects; and

WHEREAS, the **Owner** desires to continue to develop and implement the **MDS** including the identified priority levee projects; and

WHEREAS, for efficiency, continuity, and cost effectiveness, the **Owner** desires to contract with the **Engineer** to provide management and engineering services for the anticipated duration of the planning, preliminary engineering, final design and construction of the facilities for *the levee improvements within Hidalgo County*, which is comprised of *improving the levees within Hidalgo County, Texas in accordance with the study completed by the International Boundary and Water Commission (IBWC)* (incorporated herein by reference as the “**Project**” and more particularly identified in **EXHIBIT “B1” – Project Description**).

NOW, THEREFORE, the **Owner** and the **Engineer** in consideration of the mutual covenants and agreements herein contained do mutually agree as follows:

ARTICLE 1. Employment of Engineer. The **Owner** agrees to employ the **Engineer** and the **Engineer** agrees to perform professional *management and engineering* services in connection with the **Project**

as stated in the articles to follow, and for having rendered such services, the **Owner** agrees to pay the **Engineer** compensation as stated in the articles to follow.

ARTICLE 2. Character and Extent of Services. This Agreement will provide for the development of the **Project** with the following:

2.1. Scope of Work. The **Owner** will furnish items and provide those services for the development of the **Project** and fulfillment of this Agreement, as identified in **EXHIBIT "A" - Services to be Provided by the Owner**, attached hereto and made a part of this Agreement. The **Engineer** shall render professional *management* and *engineering* services for the development of the **Project** and fulfillment of this Agreement as follows (and more particularly identified in **EXHIBIT "B"- Services to be Provided by the Engineer**, attached hereto and made a part of this Agreement):

I. Engineering Management (hereinafter referred to as "**EM**"). The **Engineer** will perform all professional *management* services for the project. The **Engineer** shall direct all tasks required by the project team (hereinafter referred to as "**Project Team**"), consisting of various subconsultants, in the development of the **Project**. The **Engineer** shall organize and manage the **Project Team**, including: assigning the various *engineering* work tasks; directing and controlling the work; planning, conducting, and documenting internal and external meetings; establishing policy, procedures, and quality assurance; and furnishing the necessary technical and support staff to implement the preliminary **Project** planning and development (including, but not limited to, the preliminary *engineering* and associated environmental, surveying, final design, and construction phase services and inspection of the **Project**). Also, the **Engineer** shall lead the identification and implementation of **Project** funding, if approved by the **Owner** under *Special Services*, as outlined in Article 5.2 of this Agreement.

II. Preliminary Project Planning & Development. For preliminary planning and development of the **Project**, the **Engineer** shall perform *engineering* activities and work tasks associated with the preparation of an environmental document (if required by the Federal agencies), public involvement, and the development of primary and secondary project field control through field surveying and aerial mapping.

III. Preliminary Engineering, Final Design & Construction. For these services, the Engineer will be performing *engineering* activities as follows:

(A) **Preliminary Engineering.** As identified in EXHIBIT "A", attached hereto, the Owner shall provide to the Engineer a copy of any *engineering* studies, previously prepared by other parties contracted by the Owner, and incorporated herein by reference as the "*Hidalgo County Master Drainage System Study*", as well as all documents prepared for the "*Raymondville Drain Project*" and all recent studies prepared by the *International Boundary and Water Commission (IBWC)*. As more particularly identified in EXHIBIT "B", attached hereto, the Engineer will review and report on the said *engineering* reports. Should the review by the Engineer indicate issues in the said studies, the Engineer will report such issues to the Owner and corrections of such issues shall be responsibility of the Owner, or deemed by the Owner as additional work to be performed by the Engineer and compensated in accordance with Articles 8 and 9 of this Agreement. As a basis for the final design of the Project, the Engineer will prepare a report, hereinafter referred to as the "**Preliminary Engineering Report**". The "**Preliminary Engineering Report**" will be prepared by the Engineer in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the Owner, to include preliminary layouts, sketches, and cost estimates, and to set forth clearly the Engineer's recommendations for the final design of the Project. The Engineer's recommendations for the final design of the Project shall meet all Federal, State, and County permitting requirements.

(B) **Final Design.** Upon approval by the Owner of the Engineer's final recommendations, as shown in the "**Preliminary Engineering Report**", the Engineer will perform all required *engineering* tasks, as more particularly identified in EXHIBIT "B", attached hereto, to provide the Owner with a complete and approved set of plans, specifications, and estimates (incorporated herein by reference as "**PS&E**") for each phase of construction of the Project.

(C) **Construction.** The **Engineer** will provide construction phase *engineering* services for each phase of construction of the **Project** that is authorized and funded by the **Owner** for construction.

The steps or sequence for the professional *management* and *engineering* services outlined for the scope of work above, and more particularly identified in **EXHIBIT "B"**, attached hereto, may be performed concurrently by the **Engineer**, if approved by the **Owner**.

2.2 Classification of Services. For this Agreement, the professional services to be provided by the **Engineer**, as more particularly identified in **EXHIBIT "B"**, attached hereto, shall be classified as follows:

- (1) **Basic Services:** Basic services, incorporated herein by reference as "**Basic Services**", includes those professional services not otherwise identified under Article 5.2 of this Agreement.
- (2) **Special Services:** Special services, incorporated herein by reference as "**Special Services**", includes those professional services identified under Article 5.2 of this Agreement.

Expanded task descriptions for both *Basic Services* and *Special Services* are more particularly identified in **EXHIBIT "B"**, attached hereto.

2.3 Schedule of Work. The **Engineer** shall prepare a schedule of work (hereinafter referred to as "**Work Schedule**") in accordance with the terms identified in **EXHIBIT "C" - Work Schedule**, attached hereto and made a part of this Agreement.

ARTICLE 3. Period of Service. After execution of this Agreement, the **Engineer** shall not proceed with the work outlined under Article 2 hereof until authorized in writing by the **Owner** to proceed as provided in Article 7 hereof.

3.1 Termination Date. This Agreement shall terminate at the close of business on **December 31, 2014** (hereinafter referred to as the "**Termination Date**"), unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Engineer** and the **Owner** prior to the **Termination Date**, or otherwise terminated as provided in Article 3.4 herein and below. The **Owner** assumes no liability or obligation for payment to the **Engineer** for work performed or costs incurred by the **Engineer** prior to the date authorized

by the **Owner** for the **Engineer** to begin work, during periods when work is suspended, or subsequent to the **Termination Date**.

3.2 Extension of the Termination Date. The **Engineer** shall notify the **Owner** in writing as soon as possible if it is determined, or reasonably anticipated, that the work under this Agreement cannot be completed before the **Termination Date**, and the **Owner** may, at the **Owner's** sole discretion, extend the **Termination Date** by written supplemental agreement as provided in Article 8 hereof. The **Engineer** shall allow adequate time for review and approval by the **Owner** of the written notice and request by the **Engineer** to extend the **Termination Date**.

3.3 Suspension of Work. Should the **Owner** desire to suspend the work under this Agreement, but not terminate this Agreement, the **Owner** shall provide thirty (30) calendar days verbal notification to the **Engineer**, followed by written confirmation from the **Owner** to the **Engineer** to that effect. The thirty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**. The work under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the **Owner** to the **Engineer**. The sixty-day notice may be waived as agreed in writing by both the **Owner** and the **Engineer**.

If the **Owner** suspends the work, the **Termination Date** as identified above is not affected, and this Agreement will terminate on the date specified, unless extended by written supplemental agreement, as provided in Article 8 hereof, duly executed by the **Engineer** and the **Owner** prior to the **Termination Date**.

3.4 Termination of Agreement. This Agreement may be terminated before the stated **Termination Date** identified in Article 3.1 herein by any of the following conditions:

- (1) **Commitment of Current Revenues.** In the event that, during any term hereof, the **Owner** does not appropriate sufficient funds to meet the obligations of this Agreement, the **Owner** may terminate this Agreement upon ninety (90) days written notice to the **Engineer**. The **Owner** agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the **Owner** pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1995).

- (2) By mutual agreement and consent, in writing, of both the **Engineer** and the **Owner**.
- (3) By the **Owner**, upon failure of the **Engineer** to fulfill the **Engineer's** obligations set forth herein in a satisfactory manner as determined by the **Owner** and in sole opinion of the **Owner**, after the **Owner** provides written notice to the **Engineer** of such failure and the **Engineer** has not corrected such failure within (30) days of such written notice by the **Owner**.
- (4) By the **Engineer**, upon failure of the **Owner** to fulfill the **Owner's** obligations set forth herein, after the **Engineer** provides written notice to the **Owner** of such failure and the **Owner** has not corrected such failure within thirty (30) days of such written notice by the **Engineer**.
- (5) By the **Owner** without cause upon ninety (90) days written notice to the **Engineer**.
- (6) By satisfactory completion of all services and obligations described herein.

Should the **Owner** terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the **Engineer** notwithstanding anything herein to the contrary. In determining the value of the work performed by the **Engineer** prior to termination, the **Owner** shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the **Owner** terminate this Agreement under (5) of the paragraph above, the amount charged during the ninety (90) day notice period shall not exceed the amount charged during the preceding ninety (90) days.

If the termination of this Agreement is due to the failure of the **Engineer** to fulfill the **Engineer's** obligations under this Agreement, the **Owner** may take over the **Project** and prosecute the work to completion. In such case, the **Engineer** shall be liable to the **Owner** for any additional cost occasioned by the **Owner**.

If the **Engineer** defaults in the performance of this Agreement or if the **Owner** terminates this Agreement for fault on the part of the **Engineer**, the **Owner** will give consideration to payment of an amount in settlement to include: the actual costs incurred by the **Engineer** in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the work which is usable to the **Owner**, the cost to the **Owner** of employing another consultant and/or firm to complete the work required and the time required to do so, and other factors which affect the value to the **Owner** of the work

performed at the time of default. This Agreement shall not be considered as specifying the exclusive remedy for any default by the **Engineer**, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the **Owner** and the **Engineer** under this Agreement, except the obligations set forth in Articles 11.2, 12, 13, 15, 16, 17, 18.3, 19, 22, and 26, hereto.

ARTICLE 4. Progress and Coordination. The **Engineer** shall, from time to time during the progress of the work, confer with the **Owner**. The **Engineer** shall prepare and present such information as may be pertinent and necessary, or as may be requested by the **Owner**, in order to evaluate features of the **Engineer's** services and work.

At the request of the **Owner** or the **Engineer**, conferences shall be provided at the **Engineer's** office, the office of the **Owner**, or at other locations designated by the **Owner**. These conferences shall also include evaluation of the **Engineer's** services and work when requested by the **Owner**.

All applicable study reports shall be submitted in preliminary form for approval by the **Owner** before the final report is issued. The **Owner's** comments regarding the **Engineer's** preliminary report will be addressed by the **Engineer** in the final report.

If funds by other agencies or entities are to be used for the development of the **Project** under this Agreement, the **Engineer's** services and work may be subject to periodic review and approval by other agencies or entities, including those of the city, county, state, and/or federal agencies.

Should it be determined that the progress in the production of the **Engineer's** services and work does not satisfy the requirements of the approved **Work Schedule** as provided by **EXHIBIT "C"**, attached hereto, the **Owner** shall review the approved **Work Schedule** with the **Engineer** to determine the corrective action needed by either the **Owner** or the **Engineer**.

The **Engineer** shall promptly advise the **Owner** in writing of events which have a significant impact upon the progress of the **Engineer's** services and work and the approved **Work Schedule**, including:

(1) problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of **Project** deliverables by the **Engineer** within established time periods; this disclosure will be accompanied by a statement by the **Engineer** of recommended or immediate action taken, or contemplated, and any **Owner** or other agency or entity assistance needed to resolve the situation; and (2) favorable developments or events which enable meeting the **Work Schedule** goals sooner than anticipated.

ARTICLE 5. Compensation and Fees. For and in consideration of the services to be rendered by the **Engineer**, the **Owner** shall compensate the **Engineer** as follows:

5.1 Basic Services. For and in consideration of the *Basic Services* to be rendered by the **Engineer**, as identified in Article 2 and more particularly identified in **EXHIBIT "B"**, attached hereto, the maximum amount payable by the **Owner** to the **Engineer** for *Basic Services*, subject to adjustment in accordance with Article 6.1 herein, is equal to nine percent (9%) of the actual construction cost of the **Project** (hereinafter referred to as the "**Basic Services Fee**"). An outline and breakdown of the **Basic Services Fee** is more particularly identified in **EXHIBIT "D1" - Fee Breakdown**, attached hereto and made a part of this Agreement. Payments to the **Engineer** for *Basic Services* shall be made by the **Owner**, upon presentation by the **Engineer** of the monthly **Request for Payment**, in accordance with the terms and provisions of Article 6 herein.

5.2 Special Services. Those services to be provided by the **Engineer** as *Special Services* are set forth below and more particularly described in **EXHIBIT "B"**, attached hereto. Except for the *Special Services* described in Article 5.3 hereof, for and in consideration of these *Special Services* rendered as required by the **Engineer**, the **Owner** shall pay the **Engineer** a negotiated lump sum fee (hereinafter referred to as "**Special Services Fee**") to be determined by the hourly labor rates and non-labor rates (hereinafter referred to as "**Contract Rates**") specified in **EXHIBIT "D" - Contract Rates**, attached hereto and made a part of this Agreement, and as follows:

Special Service

1. FIELD SURVEYING

Actual performance of field surveying for the purpose of establishing horizontal and vertical control and obtaining topographic information for preliminary project planning and development, preliminary engineering, final design, right of way data, monumentation or staking and construction staking.

2. AERIAL PHOTOGRAMMETRY

Actual performance of services to develop and provide photogrammetric products (contact prints, mosaics, planimetric maps, contour maps, cross-sections, and digital terrain models).

3. RIGHT OF WAY MAPPING/ACQUISITION

Actual performance of services to develop and provide abstracting, right of way map, field note descriptions, parcel plats, appraisals and all other services required for land acquisition.

4. GEOTECHNICAL ENGINEERING

Actual performance of obtaining test borings, sampling and testing, analyses, recommendations, reports for foundation investigations and other related analyses.

5. LABORATORY OR SITE TESTING

Actual performance of laboratory, shop and mill tests, or site testing of materials or equipment provided and construction work performed, including actual performance of record testing and independent assurance testing.

**6. RESIDENT OR SITE ENGINEER,
REPRESENTATIVE**

Actual performance of services of project site engineer, resident engineer and/or representative, if required by Owner.

7. DOCUMENT COPIES

Actual performance and / or providing of additional copies (over 5) of reports; additional copies (over 5) of plans (contract drawings), specifications, and estimates (PS&E); additional copies (over 5) of bidding documents; additional copies (over 5) of as-built drawings.

Basis of Compensation

By Engineer at Contract Rates shown in EXHIBIT "D", attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

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Special Service

Basis of Compensation

9. EXPERT WITNESS

Assistance to the Owner as expert witness in any litigation with third parties, arising from the development or construction of the Project.

By Engineer at Contract Rates shown in EXHIBIT "D", attached hereto, and/or negotiated subcontract expense plus a 10% service charge. Notwithstanding the previous sentence, compensation to the Engineer for condemnation hearing testimony will include expense for time involved in actual testimony, and preparation time will be eligible for reimbursement as *Special Service*. Expert witness for condemnation hearings shall not be subcontracted.

10. MISCELLANEOUS

Investigations involving detailed consideration of operation, maintenance and overhead expenses and (unless otherwise agreed) the preparation of rate schedules, earning and expense statements; preparation of feasibility studies; environmental document preparation; appraisals, valuations, and material audits; or inventories required for certification of force account construction performed by the Owner; preparation of change orders for extra work done by the Contractor.

By Engineer at Contract Rates shown in EXHIBIT "D", attached hereto, and/or negotiated subcontract expense plus a 10% service charge.

11. FUNDING INCENTIVES

Assistance to the Owner in obtaining Project funding as outlined in Article 5.3 Incentives.

Up to an additional one-half percent (0.5%) will be added to the EM fee if the Engineer furnishes the requirements for incentives specified in Article 5.3 herein, as more particularly described in EXHIBIT "D2" – *Funding Incentives*, attached hereto.

Payments to the Engineer for *Special Services* authorized by the Owner, not included in the Basic Services Fee stipulated in Article 5.1 herein, will be made, in accordance with the terms and provisions of Article 6 hereof, by the Owner, upon presentation of monthly Request for Payment by the Engineer of such *Special Services*.

5.3 *Incentives*. If requested in writing by the Owner to the Engineer to provide services for corporate sponsorship, the Owner shall provide an incentive opportunity to the Engineer in consideration for services rendered regarding the corporate sponsorship performed by the Engineer, as more particularly identified in EXHIBIT "B" (under Funding Sources), attached hereto. This incentive is stated in EXHIBIT "D2" - *Funding Source Incentive*, attached hereto and made a part of this Agreement. Payments to the

Engineer for meeting the incentive requirements will be made by the Owner, upon presentation of a Request for Payment by the Engineer in accordance with the terms and provisions of Article 6 hereof.

ARTICLE 6. Method of Payment.

6.1 Request for Payment. Payments to the Engineer for services rendered will be made while work is in progress as executed through a lump sum fee assigned to each work authorization (hereinafter referred to as "Work Authorization") in accordance with Article 7 herein. For each Work Authorization, the Engineer shall prepare and submit to the Owner monthly progress reports in sufficient detail to support the progress of the work and in support of a request for payment (hereinafter referred to as "Request for Payment"). The progress report shall indicate the percent completion of the work accomplished by the Engineer during the billing period and to the date of the Request for Payment. On or before noon of the first Monday of each month during the performance of the services, the Engineer shall submit to the Owner for approval a Request for Payment. Payment of the lump sum fee for each Work Authorization identified in the Request for Payment will be in proportion to the percent completion of the work tasks identified in such Work Authorizations, together with a detailed breakdown of the amount and the sum of all prior payments. The Owner shall review each such Request for Payment and may make such exceptions as the Owner reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners Court of the Owner meets approving such payment, the Owner shall make payment to the Engineer in the amount approved as aforesaid subject to Article 6.4 herein and below.

Should the Project or portions of the Project be awarded for construction, the Owner will reconcile and determine the final maximum amount payable for the Basic Services Fee, as identified in Article 5.1 hereof, for that portion of the Project that has been awarded for construction. This reconciliation and determination by the Owner will be performed on a yearly basis throughout the development of the Project, and within the period of service established in Article 3. Payment due to the Engineer or credit owed to the Owner by the Engineer in the amount of this reconciliation and determination shall be applied to the next applicable Request for Payment.

If the **Project**, or any portion(s) thereof, are deleted or otherwise not constructed, compensation to the **Engineer** by the **Owner** for the **Project** or such portions of the **Project** shall be only the amounts paid the **Engineer** for actual work performed in accordance with the **Work Authorization(s)** approved by the **Owner**.

6.2 Final Payment. After final completion of the work and acceptance thereof by the **Owner**, the **Engineer** shall submit a final request for payment ("**Final Request for Payment**") which shall set forth all amounts due and remaining unpaid to the **Engineer** and upon approval thereof by the **Owner**, the **Owner** shall pay to the **Engineer** the amount due ("**Final Payment**") under such **Final Request for Payment** in accordance with the provisions of Article 6.1 hereof. The **Final Payment** shall not be made until the **Engineer** delivers to the **Owner** an affidavit that so far as the **Engineer** has knowledge or information any and all amounts due for materials and services over which the **Engineer** has control have been paid.

6.3 Qualification on Obligations to Pay. Any provision hereof to the contrary notwithstanding, the **Owner** shall not be obligated to make any payment (whether a payment under Article 6.1 hereof or **Final Payment**) to the **Engineer** hereunder if any one or more of the following conditions precedent exist:

- (1) The **Engineer** is in default of any of its obligations hereunder or otherwise is in default under this Agreement or under any contract documents related to this Agreement;
- (2) Any part of such payment is attributable to the **Engineer's** services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to the **Engineer's** services which were performed in accordance with this Agreement;
- (3) The **Engineer** has failed to make payments promptly to consultants or other third parties used in connection with the **Project** for which the **Owner** has made payment to the **Engineer**;
- (4) If the **Owner**, in good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the **Engineer's** services in accordance with this Agreement, no additional payments will be due the **Engineer** hereunder unless and until the **Engineer**, at its sole cost, performs a sufficient portion of the **Engineer's** services so that such portion of the compensation then remaining unpaid is determined by the **Owner** to be sufficient to so complete the **Engineer's** services.

6.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the **Engineer's** services to which such partial payment related or relieves the **Engineer** of any of its obligations hereunder with respect thereto.

6.5 The **Engineer** shall promptly (within 15 days of receiving payment by **Owner**) pay all bills for labor and material performed and furnished by others in connection with the performance of the **Engineer's** services.

6.6 **Waiver.** The making of the **Final Payment** shall constitute a waiver of all claims by the **Owner** except those arising from (1) faulty or defective services of the **Engineer** appearing after completion of the **Project**, (2) failure of the **Engineer's** services to comply with the requirements of this Agreement or any contracts or Agreements related to the **Project**, or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of **Final Payment** shall constitute a waiver of all claims by the **Engineer** except those previously made in writing and identified by the **Engineer** as unsettled at the time of the **Final Request for Payment**.

ARTICLE 7. Work Authorization. After execution of this Agreement, the **Engineer** shall proceed with the work outlined under Article 2 hereof, only as authorized by the **Owner** through an agreed **Work Authorization** document in the form identified in **EXHIBIT "E" – Work Authorization Form**, attached hereto and made a part of this Agreement. The **Engineer** will identify, as approved by the **Owner**, the needed services for the **Project**, as required through the course of the development of the **Project**. The **Owner** shall authorize the **Engineer** to perform one or more of the agreed tasks identified in **EXHIBIT "B"**, attached hereto, in the form of individual work authorizations. Upon authorization from the **Owner**, the **Engineer** will prepare a **Work Authorization** document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the **Owner** and the **Engineer**. The estimated cost proposal shall set forth in detail the computation of the cost of each work task, at the hourly rates established and identified in **EXHIBIT "D"**, attached hereto. The **Work Authorization** shall not waive the **Owner's** and the **Engineer's** responsibilities and obligations established in this Agreement.

The estimated cost proposal for each **Work Authorization**, developed by the **Engineer** and approved by the **Owner**, shall be used by the **Owner** to appropriate a purchase order for the **Work Authorization**. The

estimated cost proposal does not waive or alter the Owner's obligation established in this Agreement regarding the *Basic Services Fee*, *Special Services Fee*, or the *Funding Source Incentive*, as identified in Articles 5.1, 5.2, and 5.3, respectively and hereof.

Each executed **Work Authorization** shall become a part of this Agreement. Upon satisfactory completion of the **Work Authorization**, the **Engineer** shall submit the **Project's** deliverables as specified in the executed **Work Authorization** to the **Owner** for review and acceptance.

Work included in a **Work Authorization** shall not begin until the **Owner** and the **Engineer** have signed the **Work Authorization**. All work must be completed on or before the completion date specified in the **Work Authorization**, unless extended by written agreement by the **Engineer** and the **Owner**. The **Engineer** shall promptly notify the **Owner** of any event that will affect completion of the **Work Authorization**. All **Work Authorizations** must be executed and completed by both the **Engineer** and the **Owner** within the period established for this Agreement as specified in Article 3 hereof.

The final acceptance by the **Owner** of each **Work Authorization** for the **Project** shall serve as evidence of completion, on the part of the **Engineer**, of all services under this Agreement insofar as they pertain to that portion of work on the **Project** identified in the applicable work authorization.

ARTICLE 8. Supplemental Agreements. The terms of this Agreement may be amended by supplemental agreement if the **Owner** determines that (1) there is a need to extend the **Termination Date** identified in Article 3.1 hereof, (2) there has been a significant change in the scope, complexity or character of the services to be performed by the **Engineer**, and/or (3) for any other reason agreeable to the **Owner** and the **Engineer**. All supplemental agreements will be developed in the form identified in **EXHIBIT "F" – Supplemental Agreement Form**, attached hereto and made a part of this Agreement, and incorporated herein by reference as "**Supplemental Agreement**".

If determined appropriate by the **Owner**, additional compensation to the **Engineer** for (1), (2) and/or (3) above shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the **Supplemental Agreement**.

Any **Supplemental Agreement** must be executed by both the **Engineer** and the **Owner** prior to the **Termination Date** specified in Article 3 hereof.

It is distinctly understood and agreed that no claim by the **Engineer** for additional work, as identified in Article 9 hereof, or changes or revisions in work, as identified in Article 10 hereof, shall be made by the **Engineer** until full execution of the **Supplemental Agreement** and authorization to proceed is granted by the **Owner**. The **Owner** reserves the right to withhold payment to the **Engineer** pending verification of satisfactory work performed by the **Engineer**.

Article 9. Additional Work. If the **Engineer** is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the **Engineer** shall promptly notify the **Owner** in writing. In the event the **Owner** finds that such work does constitute extra work or requests that the **Engineer** provide services for extra work, the **Owner** shall so advise the **Engineer** and a written supplemental agreement will be executed between the **Owner** and the **Engineer** as provided herein. The **Engineer** shall not perform any proposed additional work or incur any additional costs prior to the execution by both the **Engineer** and the **Owner** of a supplemental agreement. Additional compensation from the **Owner** to the **Engineer** shall be paid as a negotiated lump sum fee at the **Contract Rates** specified in **EXHIBIT "D"**, attached hereto. The negotiated lump sum fee shall be incorporated into the supplemental agreement as specified in Article 8 hereof. The **Owner** shall not be liable or under any obligation to compensate the **Engineer** for work performed or costs incurred by the **Engineer** relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through supplemental agreement.

ARTICLE 10. Changes or Revisions in Work. If the **Owner** finds it necessary to request changes to the work, and the changes are within the applications of sound engineering principles, the **Engineer** shall make such revisions if requested and directed by the **Owner**.

10.1 Preliminary Work. The **Engineer** will make, without expense to the **Owner**, such revisions of any preliminary reports or drawings as may be required to meet the needs of the **Owner** and the applications of sound engineering principles.

10.2 Previously Approved or Satisfactorily Completed Work. If the Owner finds it necessary to request the Engineer to make changes to work previously approved by the Owner or work satisfactorily completed for which the Owner approves or, after a definite plan has been approved by the Owner, if a decision is subsequently made by the Owner, which for proper execution involves extra services and expenses for changes in or additions to the drawings, specifications or other documents, this will be considered as additional work, and compensation from the Owner to the Engineer will be in accordance with Article 9 hereof.

10.3 Project Delays. If the Engineer is required to perform additional work due to delays by the imposition of causes not within the Engineer's control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, such work associated with these delays shall be considered additional work, and the Engineer shall be compensated by the Owner for such extra services and expense in accordance with Article 9 hereof.

10.4 Reduction of Project Cost. Notwithstanding any provision herein to the contrary, in the event it is necessary for the Owner to require changes in the final plan of the Project to enable it to reduce the construction cost of the Project to an amount within the sum estimated by the Engineer, the Engineer will be required to make such revisions or changes. These changes will only be considered additional work by the Engineer, if the Engineer previously provided these same changes as options to the Owner at the stage of preliminary work or prior to the approval of the final plan of the Project, and the option or options were not selected or approved by the Owner to be incorporated into the final plan of the Project. Payment for this additional work will then be made to the Engineer in accordance with Article 9 hereof. If the Engineer failed to provide these changes as an option or options to the Owner at the stage of preliminary work or prior to the approval of the final plan of the Project, these changes will not be considered additional work and no additional compensation will be made to the Engineer.

ARTICLE 11. Ownership and Release of Documents.

11.1 Ownership of Documents. Original drawings and specifications are the property of the Engineer; however, the Project is the property of the Owner, and the Engineer may not use the drawings and specifications thereof for any purpose not relating to the Project without the Owner's consent. The Owner shall

be furnished with such reproductions of drawings and specifications as the **Owner** may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article 3.4 hereof, the **Engineer** will revise drawings to reflect changes made during construction and will promptly furnish the **Owner** with one complete set of reproducible record prints. Prints shall be furnished by the **Engineer**, as an additional service, at any other time requested by **Owner**. All such reproductions shall be the property of the **Owner** who may use them without the **Engineer's** permission for any proper purpose relating to the **Project**, including, but not limited to, additions to or completion of the **Project**. The **Owner** shall indemnify the **Engineer** against all claims if **Owner** uses reproductions for any specific use other than the specific intent of plans. Any additions or revisions by the **Owner** to a drawing signed, sealed, and dated by a registered professional engineer, shall be made in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

All documents furnished to the **Engineer** by the **Owner** shall be delivered to the **Owner** upon completion or termination of this Agreement. The **Engineer**, at the **Engineer's** own expense, may retain copies of such documents or any other data under this Agreement.

11.2 Release of Documents or Information. Release of information to the public or others regarding the **Project** will be in accordance with the Texas Public Information Act.

ARTICLE 12. Discounts, Rebates, Refunds. In connection with procurement services rendered by the **Engineer**, if procurement services are required of the **Engineer** hereunder, all discounts, rebates and refunds shall accrue to the **Owner**. For some purchases, the **Engineer** may deem that payment within the discount period is not safe; and/or inspection, guarantees, or other considerations may dictate delay. In such cases, the **Engineer** shall promptly notify the **Owner** so that a course of action may be mutually agreed upon by the **Owner** and the **Engineer**.

ARTICLE 13. Records, Accounting, Inspection. The **Engineer** shall keep full and detailed records and accounts in a manner approved by the **Owner**. The **Engineer** shall afford the **Owner's** authorized personnel and independent auditors, if any, full access to the work performed by the **Engineer** regarding the **Project** and to all of the **Engineer's** books, records, correspondence, instructions, drawings, receipts, vouchers and other

documents relating to such work under this Agreement, and the **Engineer** shall preserve all such records for three (3) years after final payment. The **Engineer** shall deliver to the **Owner** upon completion of such work, a statement of the cost of such work detailed according to the accounting procedures of the **Owner**.

ARTICLE 14. Subcontracting and Assignment. The **Engineer** shall make the final decision regarding the participation and participation requirements of any subconsultant for work under this Agreement. The **Engineer** shall bind every subconsultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to such subconsultants.

The **Engineer**, and the **Owner**, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract. The **Engineer** shall not assign, subcontract or transfer its interest in this contract without the prior written consent of the **Owner**.

ARTICLE 15. Patents. The **Engineer** shall indemnify and save the **Owner** harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment furnished or designed by the **Engineer** or from the use of any process designed by the **Engineer** or effected by said apparatus or equipment, and the **Engineer** shall indemnify and save the **Owner** harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement; provided, however, that the **Owner** shall promptly transmit to the **Engineer** all papers served on the **Owner** in any suit involving such claim of infringement, and provided further, that the **Owner** permits the **Engineer** to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is enjoined, the **Engineer** shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years. The **Engineer** hereby grants to the **Owner** a non-exclusive, royalty-free license under patents now or hereafter owned by the **Engineer** covering any machines, apparatus, processes, articles, or products included in the **Engineer's** work hereunder.

ARTICLE 16. Confidential Information, Inventions and Other Restrictions.

16.1 Confidential Information. The **Engineer** shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of the **Owner**, or any other confidential information given to the **Engineer** by any of the **Owner's** commissioners, elected officials, employees, or representatives or acquired by the **Engineer** during the term of or as a result of this Agreement. Any information not generally available to the public shall be considered secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in the **Engineer's** possession prior to such disclosure to the **Engineer** by the **Owner** or which is or shall lawfully be published or become part of general knowledge from sources other than the **Engineer** or which otherwise shall lawfully become available to the **Engineer** from a source other than the **Owner**, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by the **Engineer** in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the **Owner** if necessary to perform the work hereunder. The **Engineer** shall, however, inform each of its employees who receive such information of these restrictions and the **Engineer** shall take all reasonable precautions and exert all reasonable efforts to assure conformance with such restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to the **Owner**, effectuating the purposes of this Article.

16.2 Inventions. The **Engineer** shall communicate to the **Owner** at once, and require the **Engineer's** employees assigned to this **Project** to communicate to the **Owner** all inventions and improvements which any of the **Engineer's** employees, either alone or in conjunction with any of the **Owner's** employees may conceive, make or discover during the course of or as a result of work on this **Project** under this or any ensuing agreement with the **Owner** that relates to the processes, products, compositions, machinery or plants of the **Owner**, or relating in any way to any of the operations in which the **Owner** has been or is engaged at the time, and such inventions and improvements shall become the sole, exclusive property of the **Owner** without any obligation on its part to make any payment therefor in addition to any sums which the **Owner** may be obligated to pay to the

Engineer as compensation for services rendered by the **Engineer** under contract with the **Owner**. The **Engineer** shall require its employees to execute patent applications and assignments thereof to the **Owner** or its nominees, and powers of attorney relating thereto for any country the **Owner** may designate, and shall take all other actions as the **Owner** may request to maintain and protect such inventions and improvements. The **Owner** shall pay all costs or charges incurred in protecting such inventions and improvements if the **Owner** desires to protect them. Before assigning any of the **Engineer's** employees to work under any contract with the **Owner** concerning this **Project**, the **Engineer** shall obtain from them agreements satisfactory to **Owner** complying in all respects with the terms and provisions of this Article.

16.3 The rights and obligations set forth in Article 16 shall survive the performance of this Agreement, or any termination, discharge or cancellation thereof.

ARTICLE 17. Engineer's Seal, Responsibility and Warranties.

17.1 **Engineer's Seal.** The **Engineer** shall assign a responsible engineer or engineers licensed to practice in the State of Texas, who shall sign, seal and date all appropriate engineering submissions to the **Owner** in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers.

17.2 **Engineer's Responsibility.** The **Engineer** shall be responsible for the accuracy of the engineering design for the **Project**, and shall promptly make necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**. No additional compensation will be made to the **Engineer** for any necessary revisions or corrections resulting from errors, omissions, or negligent acts by the **Engineer**.

The **Engineer's** responsibility for all questions arising from design errors and/or omissions will be determined by the **Owner** or a designee appointed by the **Owner**. The **Engineer** will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the **Project** has been completed.

17.3 Warranties.

(1) The **Engineer** warrants that engineering design work performed by the **Engineer** hereunder shall be in accordance with sound engineering design practices and in conformance with applicable

code and standards established for such work.

(2) Notwithstanding anything to the contrary contained in this Agreement, the **Owner** and the **Engineer** agree and acknowledge that the **Owner** is entering into this Agreement in reliance on the **Engineer's** experience and abilities with respect to performing the **Engineer's** services hereunder. The **Engineer** will use the **Engineer's** best efforts, skill, judgment and abilities to design the **Project** and to further the interests of the **Owner** in accordance with the **Owner's** requirements and procedures, in accordance with professional standards, and in compliance with applicable National, Federal, State, County and Municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, the **Engineer** represents, covenants and agrees (within normal *engineering* practices) to the **Owner** that the plans, specifications, and estimates ("PS&E") for the **Project**, as identified in Article 2.1 hereof, and the improvements when built in accordance therewith conform to all applicable governmental regulations, statutes and ordinances then in effect. The **Engineer** represents, covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the **Engineer's** services.

(3) The **Engineer** represents, covenants and agrees that all of **Engineer's** services to be furnished by the **Engineer** under or pursuant to this Agreement from the inception of the Agreement until the **Project** has been fully completed, shall be of the standard and quality which prevail among engineers of similar experience, knowledge, skill and ability engaged in engineering practice throughout Texas under the same or similar circumstances involving the design and construction of a **Project** such as the **Project** with all the amenities as set forth in the PS&E.

(4) The **Engineer** represents, covenants and agrees that the PS&E of the **Project** will be accurate and free from any material errors. The **Engineer** additionally represents, covenants, and agrees to the following: that the design of the **Project** will conform to its foreseeable use as a **Project** with all the amenities as set forth in the PS&E of the **Project**; that the result of the PS&E, if built in accordance therewith, will be suitable for purposes for which the **Project** is designed; that the result

of Engineer's project representation of the Project will be suitable for purposes for which the Project is designed; and, the Project will be observed in a workmanlike, professional manner and will be suitable for the Project's intended purpose. The Engineer's responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner of the PS&E nor shall the Engineer be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Engineer's skill and knowledge in preparing the PS&E.

(5) In connection with the Engineer's performance of procurement services hereunder, if any, the Engineer shall use its best efforts to obtain from all vendors of equipment and materials, fullest possible warranties against defective materials and workmanship for the benefit of the Owner.

ARTICLE 18. Engineer's Resources. The Engineer shall furnish and maintain, at the Engineer's own expense, office space for the performance of all services, skilled and sufficient personnel, as well as adequate and sufficient equipment to perform the services as required under this Agreement.

18.1 Project Manager. The Engineer shall provide a manager (Project Manager) for the Project that is a registered professional engineer in the State of Texas. The Project Manager shall have such knowledge and experience as will enable the Project Manager to perform the duties required for the services under this Agreement. The Engineer may not change the Project Manager during the course of the Project without prior consent of the Owner. If, due to situations beyond the control of the Engineer, the Engineer must change the Project Manager prior to the completion and acceptance of the Project, the Engineer will submit a request to change the Project Manager to the Owner for approval.

18.2 Employees of the Engineer. All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them and required for the services under this Agreement. Any employee of the Engineer who, in the opinion of the Owner, is incompetent, or whose conduct becomes detrimental to the work required under this Agreement, shall immediately be removed from association with the Project when so instructed by the Owner. The Engineer certifies that the Engineer

presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

18.3 Documents/Information Exchange. The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the **Project**. Recognizing that there will be several members of the **Project Team** (identified in the organizational chart shown in **EXHIBIT "B2"**, attached hereto) participating in the development of the **Project**, and taking into consideration that the **Owner** has a significant investment in the development of the **Project**, there is a need for the **Engineer** to provide consistency in document development for information exchange. Consistency in document development for information exchange and production will help facilitate an economically efficient **Project**. Therefore, the **Engineer** shall provide the **Owner** with documents and information in accordance with the special requirements outlined in **EXHIBIT "H"- Computer Documents and Information Exchange**, attached hereto and made a part of this Agreement.

ARTICLE 19. Indemnification. To the fullest extent permitted by applicable law, the **Engineer** and its agents, partners, subcontractors, and consultants (collectively "**Indemnitors**") shall and do agree to indemnify, and hold harmless the **Owner**, the **Owner's** respective directors, elected officials, employees and agents (collectively "**Indemnitees**") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "**Liabilities**") of any person or entity whomsoever arising out of, caused by or resulting from the performance of the **Engineer's** services through activities of the **Engineer**, its agents, partners, subcontractors and/or consultants performed under this Agreement, and which are caused by or result from error, omission, or negligent act of the **Engineer** or of any person employed or contracted by the **Engineer** provided that any such **Liabilities** (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom and (2) are caused in whole or in part by any negligent act or omission of the **Engineer**, anyone directly or indirectly employed by the **Engineer** or anyone for whose acts the **Engineer** may be legally liable. The **Engineer** shall also save harmless the **Owner** from any and all expense, including, but not limited to, attorney fees which may

be incurred by the Owner in litigation or otherwise resisting said claim or liabilities which may be imposed on the Owner as a result of such activities by the Engineer, its agents, partners, subcontractors and/or consultants. In this connection, it is agreed and understood that the Engineer shall not be responsible for any portion of the liability proximately caused by the Owner's negligence.

ARTICLE 20. Joint and Several Liability. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by the indemnification in Article 19 hereof, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnatee. The provisions of this Article shall not be construed to eliminate or reduce any other indemnification or right which the Owner or any of the Indemnitees has by law.

ARTICLE 21. Insurance. The Engineer shall obtain and maintain insurance in the minimum limits of liability for each of the types of insurance coverage identified as follows:

- (1) Workers' Compensation, endorsed with a waiver of subrogation in favor of the Owner in limits of liability not less than the benefits allowed under the Texas Workers' Compensation Law ("Statutory Texas").
- (2) Commercial General & Professional Liability, endorsed with the Owner as an additional insured and endorsed with a waiver of subrogation in favor of the Owner, in limits of liability not less than one million dollars (\$1,000,000) combined single limit each claim and in the aggregate for bodily injury and property damage. The Professional Liability insurance shall be \$1,000,000 combined single limit each claim in the aggregate. *Subconsultants will be required to maintain limits of liability not less than one million dollars (\$1,000,000) combined single limit each claim and in the aggregate for bodily injury and property damage.*
- (3) Texas Business Automobile Policy, endorsed with the Owner as an additional insured and endorsed with a waiver of subrogation in favor of the Owner, in limits of liability not less than two hundred fifty thousand dollars (\$250,000) each person for bodily injury, five hundred thousand dollars (\$500,000)*

each occurrence for bodily injury, and one hundred thousand dollars (\$100,000) each occurrence for property damage.

The Engineer covenants and agrees to maintain an insurance policy in the minimum limits of liability for each of the types of insurance coverage identified above. The Engineer shall furnish the Owner with a certificate of insurance (*Hidalgo County Drainage District No. 1 Certificate of Insurance*) showing the said policy to be in full force and effect during the period of service, identified in Article 3 hereto, for this Agreement. The completed *Hidalgo County Drainage District No. 1 Certificate of Insurance* shall be attached hereto and identified as **EXHIBIT "G"- *Hidalgo County Drainage District No. 1 Certificate of Insurance***. The Engineer will be considered in breach of contract should the Engineer fail to maintain an insurance policy in the minimum limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and termination of the Agreement as outlined in Article 3.4 hereto. Additionally, the Engineer covenants and agrees to use its best efforts to maintain an insurance policy in the minimum limits of liability and requirements identified above until one year following the date of the acceptance of the Project by the Owner.

ARTICLE 22. Compliance with Laws. The Engineer shall comply with all applicable Federal, State and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Engineer shall furnish the Owner with satisfactory proof of its compliance therewith.

ARTICLE 23. Noncollusion. The Engineer warrants that the Engineer has not employed or retained any company or persons, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement, and that the Engineer has not paid or agreed to pay any company, engineer or any other person or entity any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or execution of this Agreement. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in the Owner's discretion, to deduct from the

Basic Services Fee, Special Services Fee, and/or the Incentives as identified in Articles 5.1, 5.2, and 5.3 hereto and respectively, or otherwise recover, the full amount of each fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE 24. Gratuities. The Owner mandates that employees of the Owner shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the Owner under this Agreement; the only exceptions allowed are ordinary business meals. Any person doing business with or who may reasonably seeking to do business with the Owner under this Agreement may not make any offer of benefits, gifts or favors to Owner employees, except as mentioned herein above. Failure on the part of the Engineer to adhere to this provision may result in the termination of this Agreement.

ARTICLE 25. Payment of Franchise Tax. The Engineer hereby certifies that the Engineer is not delinquent in Texas franchise tax payments, or that the Engineer is exempt from, or not subject to, such a tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the Owner.

ARTICLE 26. Disputes. The Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Engineer in support of the services under this Agreement.

ARTICLE 27. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 28. Notices. All notices to either party by the other required under this Agreement shall be personally delivered or mailed to such party at the following respective addresses:

OWNER:

*Hidalgo Co. Drainage Dist. No. 1
900 N. Doolittle
Edinburg, Texas 78539*

ENGINEER:

*Dannenbaum Engineering Company - McAllen, LLC
1109 Nolana Loop, Suite 208
McAllen, Texas 78504*

The address may be changed by either party by written notice, and notice so mailed shall be effective upon mailing.

ARTICLE 29. Miscellaneous Provisions.

(1) This Agreement constitutes the entire Agreement between the **Engineer** and the **Owner** relating to the work herein described, and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. There are no previous or contemporary representations or warranties of the **Owner** or the **Engineer** not set forth herein.

(2) Except as specifically provided herein, no modification, waiver, termination, rescission, discharge, or cancellation of this Agreement or of any terms thereof shall be binding on the **Owner** unless in writing and executed by an officer or employee of the **Owner** specifically authorized to do so.

(3) No waiver of any provision of or a default under this Agreement shall affect the right of the **Owner** thereafter to enforce said provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(4) No modification, waiver, termination, discharge or cancellation of this Agreement or of any terms thereof shall impair the **Owner's** rights with respect to any liabilities, whether or not liquidated, of the **Engineer** to the **Owner** theretofore accrued.

(5) All rights and remedies of the **Owner** specified in this Agreement are in addition to the **Owner's** other rights and remedies.

(6) The **Engineer** shall remain an independent contractor and shall have no power, nor shall the **Engineer** represent that the **Engineer** has any power, to bind the **Owner** or to assume or to create any obligation express or implied on behalf of the **Owner** except as specifically authorized in advance by the **Owner**.

(7) The Agreement shall be construed under the laws of the State of Texas and is performable in Hidalgo County, Texas.

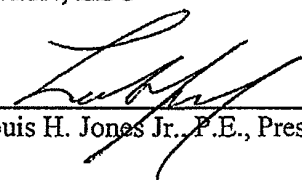
(8) This Agreement may only be amended by a written document executed by the **Owner** and the **Engineer** as provided by Article 8 herein.

ARTICLE 30. Signatory Warranty The undersigned signatory or signatories for the **Engineer** hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this Agreement, and that he or she has full and complete authority to enter into this Agreement on behalf of the **Engineer**. The above-stated representations and warranties are made for the purpose of inducing the **Owner** to enter into this Agreement.


IN WITNESS WHEREOF, the **Engineer** and the **Owner** have caused this Agreement for Professional Services to be effective as of the _____ day of _____, 200_____.

ENGINEER:
DANNENBAUM ENGINEERING COMPANY -
MCALLEN, LLC

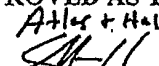
APPROVED BY HIDALGO COUNTY
DRAINAGE DISTRICT #1 BOARD
OF DIRECTORS ON: 11/7/06

BY: 
Louis H. Jones Jr., P.E., President

OWNER:
HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

BY: 
Ramon Garcia, Chairman of the Board

APPROVED AS TO FORM:

Atlas & Hall, LLP
BY: 
ATLAS & HALL, LLP.

Approved by Commissioners' Court
on 11-7-06

ATTACHMENTS:

- EXHIBIT A** -Scope of Services to be Provided by the Owner
- EXHIBIT B** -Scope of Services to be Provided by the Engineer
- EXHIBIT B1** -Project Description
- EXHIBIT C** -Work Schedule
- EXHIBIT D** -Engineer's Contract Rates
- EXHIBIT D1** -Fee Breakdown
- EXHIBIT D2** -Funding Source Incentive
- EXHIBIT E** -Work Authorization Form
- EXHIBIT F** -Supplemental Agreement Form
- EXHIBIT G** -Certificate of Insurance (*Hidalgo County Drainage District No. 1*)

EXHIBIT "A"
Services to be Provided by the Owner

The following provides an outline of the services to be provided by the **Owner** in the development of the **Project** (as defined and more particularly identified in **EXHIBIT "B1"** attached to this Agreement).

I. GENERAL

The **Owner** will provide to the **Engineer** the following:

- (1) Authorization to the **Engineer** to begin work in accordance with Article 7 of this Agreement.
- (2) Payment for work performed by the **Engineer** and accepted by the **Owner** in accordance with Article 5 and Article 6, both of this Agreement.
- (3) Assistance to the **Engineer**, as necessary, to obtain the required data and information from other local, Regional, State and Federal agencies that the **Engineer** cannot easily obtain.
- (4) Provide any available relevant data the **Owner** may have on file concerning the project.
- (5) Provide timely review and decisions in response to the **Engineer's** request for information and/or required submittals and deliverables, in order for the **Engineer** to maintain the agreed-upon work schedule prepared in accordance with **EXHIBIT "C"** attached to this Agreement.
- (6) Attend and participate in progress meetings as required and as coordinated and conducted by the **Engineer**.
- (7) Provide a copy of any engineering studies, previously prepared by other parties contracted by the **Owner** and incorporated herein by reference as the "*Lateral Drain Outfall System*", and any associated documentation that may be relevant to the **Engineer** in the evaluation and verification of the "*Lateral Drain Outfall System*". Also, the **Owner** will make available all documents with regard to the "*Raymondville Drain Project*". The **Owner** will also make available all documents prepared by the *International Boundary and Water Commission (IBWC) regarding the upgrade of the Levee System within Hidalgo County, Texas*; if made available to the **Owner** by the IBWC.

II. PRELIMINARY PROJECT PLANNING & DEVELOPMENT

The **Owner** will provide to the **Engineer** the following:

- (1) Approve the **Work Plan** prepared by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this Agreement.
- (2) Approve the **Project Development Schedule** prepared by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this Agreement.
- (3) **Construction Estimate**. Provide the **Engineer** a copy of historical bid tabulations, if available, for similar projects and periodically review and approve the **Construction Estimate** as developed and prepared by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this

Hidalgo County Drainage District No. 1 / Dannenbaum Engineering Company-McAllen, LLC
"*Levee System Improvement Project within Hidalgo County, Texas*"

EXHIBIT "A"
Page 1 of 3

- (4) Submit all required applications prepared by the **Engineer** to funding sources.
- (5) **Capital Improvement Program (CIP).** If approved by Owner under *Special Services*, as identified in Article 5.2, provide any relevant data regarding the Owner's budget and budget process to assist the **Engineer** in the preparation of the CIP more particularly identified in **EXHIBIT "B"** attached to this Agreement; review and approve the CIP prepared by the **Engineer**.
- (6) **Public Involvement.** Assist the **Engineer** in the preparation of the project mailing list; provide representation at all public meetings; provide representation at all public hearings; additionally:

Public Meetings

- a. Approve agenda and exhibits prior to each public meeting.
- b. Approve date and location of the public meeting.
- c. Review/approve Public Meeting Report.

Public Hearings

- d. Upon applicable agency approval of the schematic and environmental document, the Owner will authorize the **Engineer** to conduct and/or afford a public hearing if required.
- e. Approve agenda and all exhibits prior to the public hearing.
- f. Approve date and location of the public hearing.
- g. Review/approve Public Hearing Report.

III. PRELIMINARY ENGINEERING, FINAL DESIGN & CONSTRUCTION

The Owner will provide to the **Engineer** the following:

Preliminary Engineering

- (1) Attend the **Preliminary Concept Conference** coordinated and conducted by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this Agreement.
- (2) Assist the **Engineer** as required in the coordination with any other coordinating agency or entity.
- (3) Review and approve the *"Preliminary Engineering Report"* prepared by the **Engineer** and more particularly identified in **EXHIBIT "B"** attached to this Agreement.

Final Design

- (4) **Right-of-Way Data.** Upon approval of the schematic and environmental document, authorize the **Engineer** to begin work on the right-of-way (ROW) map; additionally:
 - a. Provide available existing ROW plans.
 - b. Assist the **Engineer**, as necessary, with coordination of any utility relocations that may be required.
 - c. Review/approve the preliminary ROW map; authorize preparation of the field notes and parcel descriptions.

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- d. Review/approve ROW map, field notes and parcel descriptions.
 - e. Acquire ROW in accordance with federal and/or county guidelines and procedures.
- (5) Review and approve the **Project** design criteria and the *“Design Policy and Procedures Manual”* developed and prepared by the **Engineer** and more particularly identified in **EXHIBIT “B”** attached to this Agreement.
- (6) Review and approve plan, specifications, and estimate (PS&E) for the **Project** or portions of the **Project** as prepared by the **Engineer** and more particularly identified in **EXHIBIT “B”** attached to this Agreement.

Construction

- (7) Provide the *“Construction Management Policy & Procedures Manual”* developed and prepared by the **Owner** and more particularly identified in **EXHIBIT “B”** attached to this Agreement.
- (8) Review and approve all services provided by the **Engineer** (and more particularly identified in attached to this Agreement) regarding advertising for each authorized construction contract for the **Project**, the opening and tabulation of bids, and the preparation of contract document for the award of construction contracts.
- (9) Review and approve change orders as required and prepared by the **Engineer**.

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CLASSIFICATION OF SERVICES. In accordance with Article 2.2 of this Agreement, the services to be provided by the **Engineer** shall be classified as either *Basic Services* or *Special Services*. The expanded descriptions of the services identified later in this exhibit and to be provided by the **Engineer** are classified as follows:

Management:

I. ENGINEERING MANAGEMENT (EM)

(A) Preliminary Project Planning and Development

- | | |
|---|----------------|
| (1) Project Development Schedule | <i>Basic</i> |
| (2) Construction Estimate | <i>Basic</i> |
| (3) Quality Control / Quality Assurance Program | <i>Basic</i> |
| (4) Subcontract Administration | <i>Basic</i> |
| (5) Funding Liaison and Funding Application Preparation | <i>Special</i> |
| (6) Capital Improvement Program (CIP) | <i>Basic</i> |
| (7) Management / Coordination of Engineering Activities | <i>Basic</i> |
| (8) Implementation of QC/QA Program | <i>Basic</i> |

(B) Preliminary Engineering

- | | |
|--|--------------|
| (1) Preliminary Concept Conference | <i>Basic</i> |
| (2) Management / Coordination of Engineering Activities | <i>Basic</i> |
| (3) Implementation of QC/QA Program | <i>Basic</i> |
| (4) Preparation of " <i>Preliminary Engineering Report</i> " | <i>Basic</i> |
| (5) Coordination with all reviewing agencies (IBWC, FEMA, USACE, etc.) | <i>Basic</i> |

(C) Final Design

- | | |
|---|--------------|
| (1) " <i>Design Policy & Procedures Manual</i> " | <i>Basic</i> |
| (2) Design Concept Conference | <i>Basic</i> |
| (3) Management / Coordination of Engineering Activities | <i>Basic</i> |
| (4) Implementation of QC/QA Program | <i>Basic</i> |

(D) Construction Management

- | | |
|---|----------------|
| (1) " <i>Construction Management Policy & Procedures Manual</i> " | <i>Basic</i> |
| (2) Construction Bidding | <i>Basic</i> |
| (3) Owner's Representative | <i>Basic</i> |
| (4) Defects and Deficiencies | <i>Basic</i> |
| (5) Monthly Construction Progress Reports | <i>Basic</i> |
| (6) Recommendations for Payment to the Construction Contractor | <i>Basic</i> |
| (7) Project Site Management | <i>Special</i> |
| (8) Implementation of QC/QA Program | <i>Basic</i> |
| (9) Change Orders | <i>Special</i> |
| (10) Final Acceptance, Performance Testing, Shop Drawing Review | <i>Basic</i> |

Engineering:

II. PRELIMINARY PROJECT PLANNING & DEVELOPMENT

- | | |
|---|----------------|
| (1) Environmental Document Preparation & Public Involvement (if required By Federal agencies) | <i>Special</i> |
| (2) Field Surveying & Photogrammetry (if not provided by Owner) | <i>Special</i> |

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Engineering:

III. PRELIMINARY ENGINEERING, FINAL DESIGN & CONSTRUCTION

(A) Preliminary Engineering:

- | | |
|--|--------------------------|
| (1) Preliminary Field Surveying (using Lidar/ provided by Owner) | <i>Provided by Owner</i> |
| (2) Data Collection | <i>Basic</i> |
| (3) Geographical Information System | <i>Basic</i> |
| (4) Hydrologic Analysis | <i>Basic</i> |
| (5) Hydraulic Analysis | <i>Basic</i> |
| (6) Flood Plain Mapping | <i>Basic</i> |
| (7) Alternate Solutions /Recommendations for Final Design | <i>Basic.</i> |
| (8) Final Report – <i>"Preliminary Engineering Report"</i> | <i>Basic</i> |

(B) Final Design:

- | | |
|---|----------------|
| (1) Right-of-Way Data and ROW Map | <i>Special</i> |
| (2) Design Field Surveying | <i>Special</i> |
| (3) Geotechnical Investigations and Reports | <i>Special</i> |
| (4) Permitting | <i>Basic</i> |
| (5) Levee / Channel / Drainage Design | <i>Basic</i> |
| (6) Roadway Design | <i>Basic</i> |
| (7) Bridge Design | <i>Basic</i> |
| (8) Plans, Specifications & Estimates | <i>Basic</i> |

(C) Construction:

- | | |
|--|----------------|
| (1) Construction Bidding Documents | <i>Basic</i> |
| (2) Project Site Representation: | <i>Special</i> |
| a. Engineering Support Data for Defects & Deficiencies | <i>Special</i> |
| b. Daily and Weekly Construction Reports | <i>Special</i> |
| c. Measurement / Calculations for Contractor Payment | <i>Special</i> |
| d. Project Engineer / Resident Engineer Services | <i>Special</i> |
| (3) Miscellaneous Technical Activities: | |
| a. Construction Field Surveying | <i>Special</i> |
| b. Shop Drawing Review | <i>Basic</i> |
| c. Control of Materials & Equipment | <i>Special</i> |
| d. Change Orders | <i>Basic</i> |
| (4) Final Acceptance: | |
| a. Performance Testing | <i>Special</i> |
| b. As-Built Drawings | <i>Basic</i> |

EXPANDED DESCRIPTIONS OF SERVICES. The expanded descriptions of the services to be provided by the Engineer are described on the following pages.

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I. ENGINEERING MANAGEMENT (*EM*)

The following outline provides a summary for the *basic* and *special services* to be provided by the Engineer under services of this Agreement. The contractual services will be outlined in each Work Authorization as outlined in Article 7.

For these services, the Engineer shall manage the Project Team, consisting of various sub-providers, in the development of the Project as defined and more particularly described in EXHIBIT "B1" attached to this Agreement. The services will include the following:

- (A) **Preliminary Project Planning and Development.** In general, this will include the *management* of the preliminary planning process and advance project development (APD) that is required for the Project. (A summary of specific requirements for *engineering* activities are outlined later in this exhibit.) The Engineer will identify, coordinate, and implement the *management* requirements for preliminary planning and advance Project development for the Project. Specific work activities to be provided by the Engineer will include:
- (1) **Project Development Schedule.** The Engineer will prepare a **Project Development Schedule**. This schedule will be developed from the notice to proceed with work through final record drawings. The schedule will be monitored, by the Engineer, throughout Project development. It will be provided, as well as any updates, to the Owner and each Project Team member as a part of the **Work Plan** identified in (1). The schedule will identify all major milestones and Project deliverables. The Engineer will inform the Owner (in reasonable advance of the delay) should the Engineer encounter delays that would prevent the performance of all work in accordance with the established schedule.
 - (2) **Construction Estimate.** The Engineer shall prepare a preliminary estimate for the construction of the Project. The preliminary construction estimate shall be monitored, verified and updated throughout the course of Project development.
 - (3) **Quality Control / Quality Assurance (QC/QA) Program.** The Engineer shall develop a quality control and quality assurance program for the Project to ensure the Project Team is producing quality work for the Project.
 - (4) **Subcontract Administration.** The Engineer shall initiate, execute and monitor all subcontracts for the duration of the Project. The Engineer shall advise and/or provide recommendations to the Owner, as the Project progresses, should additional sub-providers be required. All subcontracting and assignment will be in accordance with Article 14.
 - (5) **Funding Sources.** If approved by the Owner as *Special Services*, as outlined in Article 5.2, the development and construction of the Project may be eligible for funding from outside sources. If approved by the Owner as *Special Services*, the Engineer's responsibilities regarding funding sources will include the following:

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I. *EM* (continued)

- (a) **Liaison (Engineer)** will act as Corporate Sponsor for obtaining funding from potential funding sources for the Project. The Corporate Sponsor will act as liaison for the Owner to applicable State and Federal resource agencies for possible funding assistance.
- (b) The **Engineer** will identify and develop a list of possible funding sources for the Project.
- (c) The **Engineer** will prepare all required applications to funding sources.
- (6) **Capital Improvement Program (CIP)**. If approved by the Owner as *Special Services*, as outlined in Article 5.2, the **Engineer** will prepare a CIP based on a conceptual sequence of construction for the Project as identified in the final recommendations shown in the "*Preliminary Engineering Report*" developed by the **Engineer** under the preliminary engineering activities identified later in this exhibit. The primary focus will be to address the overall needs of the system, the funding availability, the identification of operational issues, the acquisition of right of way, and the prioritization of those needs and issues in a cost effective and efficient manner (conducive of funding availability). The CIP will be continuously monitored and updated by the **Engineer** throughout Project development.
- (7) **Management/Coordination of Engineering Activities**. The **Engineer** shall *manage* and coordinate the specific *engineering* work activities, tasks, special services for Environmental Document Preparation (if required by Federal agencies), Public Involvement, and Field/Reconn/Surveying and Photogrammetry (more particularly identified later in this exhibit under II - Preliminary Project Planning and Development).
- (8) **Implement QC/QA Program**. The **Engineer** will monitor and perform the program developed to ensure the quality of the Environmental Document (if required by Federal agencies), public involvement procedures, and the products and data from field/recon/surveying and aerial photogrammetry, and their compliance with applicable standards and requirements.
- (B) **Preliminary Engineering**. The **Engineer** will ultimately deliver the final recommendations for the design of the project in the "*Preliminary Engineering Report*". (Specific requirements for *engineering* activities are outlined later in this exhibit under II - Preliminary Engineering, Design and Construction.) The **Engineer** shall *manage* and coordinate the activities of the Project Team in the collection of geographical information and *engineering* data, the selection of computer software, and the distribution of Project information and status to the Owner and Project Team throughout the development of the "*Preliminary Engineering Report*". Specific *management* tasks to be provided by the **Engineer** will include:
 - (1) **Preliminary Concept Conference**. The **Engineer** will coordinate and conduct a preliminary concept conference (PCC) with the Owner, and any other stakeholders approved by the Owner. At the PCC, the **Engineer** will outline the issues and aspects involved in the development of the "*Preliminary Engineering Report*", identify existing conditions and design requirements, and present the approach to the development of the report for approval by the Owner.

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I. *EM* (continued)

- (2) **Management/Coordination of Engineering Activities.** The Engineer shall *manage* and coordinate the Project Team in the preparation of specific *engineering* work activities, tasks, special services for the final development of the "*Preliminary Engineering Report*", including Field Surveying, Data Collection, the development of a Geographical Information System, Hydrologic/Hydraulic Analysis, Flood Plain Mapping, Alternate Solutions, and Final Recommendations (more particularly defined with the *engineering* activities identified in this exhibit under II - Preliminary Engineering, Design and Construction (*Preliminary Engineering*)).
 - (3) **Implement QC/QA Program.** The Engineer will monitor and perform the QC/QA program developed to ensure the quality of the "*Preliminary Engineering Report*", and its compliance with standards of sound *engineering* principles and the agreed-upon design criteria established at the PCC.
 - (4) **Final Report: "*Preliminary Engineering Report*".** The Engineer will provide, to the Owner, five (5) bound, color copies of the "*Preliminary Engineering Report*", including all attachments, exhibits, preliminary layouts, sketches, profiles, and cost estimate.
 - (5) **Coordination with various agencies.** The development of the "*Preliminary Engineering Report*" may require documentation and/or coordination with various agencies. The Engineer will act as a liaison for the Owner, and will attend any meetings, and develop / prepare any required correspondence, documentation, and/or applications to satisfy the applicable Federal, State, and local regulations.
- (C) **Final Design.** After the Owner has approved the Engineer's final recommendations as shown in the "*Preliminary Engineering Report*" and the recommendations meet all Federal, State, and County permitting requirements, the Engineer, will coordinate the activities of the Project Team during the final design of the Project by developing and preparing all policies and procedures, managing the sub-providers activities and performance, and performing quality control and quality assurance for all design documents associated with the Project. One of the primary deliverables for the Engineer to provide the Owner is a complete and approved set of plans, specifications, and estimate (PS&E) for each phase of construction of the Project. Specific *management* work activities to be provided by the Engineer will include:
- (1) **"Design Policy & Procedures Manual".** The Owner will provide a policy and procedures manual for final design to be used by the Project Team in the development of the Project. The purpose of this will be to set policy with regards to the approved design criteria, and to provide consistency in the development of the documents for design, plans, specifications and estimates. Once the manual has been provided by the Owner it will be distributed by the Engineer to each member of the Project Team. The Owner will be responsible for updating and maintaining the manual and distributing any revisions throughout Project development. Items to be identified in the "*Design Policy & Procedures Manual*" provided by the Owner will include, but not be limited to, the following:
 - (a) Project Description and Final Recommendations of the "*Preliminary Engineering Report*"
 - (b) Environmental

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I. *EM* (continued)

- (c) Correlation and Agreement with Other Agencies
 - (d) Application of Design Standards (City, County, State, AASHTO)
 - (e) Requirements for Preliminary Submittals
 - (f) Basic Design Criteria
 - (g) Preparation for Plans, Specifications, and Estimate (PS&E) Submittals
 - (h) Formats for Supporting Documents
 - (i) CADD Standards
 - (j) Specifications
- (2) **Design Concept Conference (DCC).** The **Engineer** shall coordinate and conduct a design concept conference with the **Owner** and **Project Team**. At the DCC, the **Engineer** will distribute the "*Design Policy & Procedures Manual*" provided by **Owner** and discuss the **Project Development Schedule** with the **Project Team**.
- (3) **Management/Coordination of Engineering Activities.** The **Engineer** shall *manage* and coordinate the **Project Team** in the development of the documents for final design, including: Right of Way Data, Design Field Surveying, Geotechnical Investigations, Permitting, Channel/Drainage Design, Roadway Design, Bridge Design, PS&E, and other miscellaneous design and plan preparation items (more particularly defined with the engineering activities identified in this exhibit under II – Preliminary Engineering, Design and Construction (**Final Design**)).
- (4) **Implement QC/QA Program.** The **Engineer** shall monitor and perform the QC/QA program developed to ensure the quality of the documents associated with Right of Way Data (Mapping), Design Field Surveying, Geotechnical Investigations, Permitting, Channel/Drainage Design, Roadway Design, Bridge Design, PS&E, and other miscellaneous design and plan preparation items (more particularly defined with the *engineering* activities identified in this exhibit under II – Preliminary Engineering, Design and Construction (**Final Design Engineering**)). These designs shall in all respects combine the application of sound *engineering* principles with a high degree of economy and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval.
- (D) **Construction Management.** The **Engineer** shall provide construction *management* services for each authorized construction contract of the **Project**. The **Engineer** shall also assist the **Owner** in the advertisement for construction bids, the opening and tabulation of the bids, provide a recommendation as to the proper action on all bid proposals received, and assist in the preparation of formal contract documents for the award of contracts. Specific *management* work activities to be provided by the **Engineer** will include:
- (1) "*Construction Management Policy & Procedures Manual*". The **Owner** shall will provide a manual that outlines the policy and procedures for the *management* and administration of construction of the **Project**. The manual's information will include, but not be limited to, construction contract recordkeeping (daily reports, weekly reports, monthly progress reports, etc.), contractor payment, change order format and procedures, site inspection, scheduling, and final inspection.
 - (2) **Construction Bidding Documents.** The **Engineer** shall perform the following in preparation of the construction bidding documents:

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I. *EM* (continued)

- (a) Upon completion of QC/QA, the **Engineer** shall furnish to the **Owner** all necessary copies of approved plans, specifications, **Engineer's** estimate, notices to bidders, and proposals for each authorized construction contract.
 - (b) The **Engineer** shall assist the **Owner** in advertising for each authorized construction contract for the **Project**.
 - (c) The **Engineer** shall assist the **Owner** in the opening and tabulation of bids for each authorized construction for the **Project**, and recommend to the **Owner** as to the proper action on all bid proposals received.
 - (d) The **Engineer** shall assist the **Owner** in the preparation of formal contract documents for the award of construction contracts.
- (3) **Owner's Representative.** In general, the **Engineer** shall provide the *management* activities required for consultation and advisement to the **Owner** during construction, and act as the **Owner's** representative as provided in the General Conditions of the Construction Contract. The extent and limitations of the duties, responsibilities and the authority of the **Engineer** as assigned in the General Conditions of the Contract shall not be modified, except as the **Engineer** may otherwise agree in writing.
- (4) **Defects and Deficiencies.** In providing the *management and administration* of the authorized construction contract, the **Engineer** shall use the **Engineer's** best efforts to protect the **Owner** against defects and deficiencies in the work of the construction contractor, hereinafter called the "**Contractor**". The **Engineer** does not guarantee the performance of the **Contractor**; however, the **Engineer** will promptly notify the **Owner** of any such defect or deficiency, and take all steps possible to require the **Contractor** to correct the defect or deficiency.
- (5) **Progress Reports.** The **Engineer** will obtain the daily and weekly reports provided from the *engineering* activities identified under II – Preliminary Engineering, Design, and Construction (**Construction**) in this exhibit and prepare a monthly progress report, which outlines the construction progress in a form and manner satisfactory to the **Owner**.
- (6) **Contractor Payment.** The **Engineer** shall obtain the measurements and calculated quantities prepared under the *engineering* activities identified under II – Preliminary Engineering, Design, and Construction (**Construction**) in this exhibit, and review and approve the monthly and final estimates for payments to the **Contractor** for those items of work accepted and conforming to the construction contract specifications. The **Engineer** will furnish to the **Owner** any necessary certifications as to payments to the **Contractor** and suppliers. *Note: The Engineer is not responsible for actual payments to the Contractor.*
- (7) **Project Site Management.** The **Engineer** will coordinate and monitor the **Project** site representation of the authorized construction contract by providing the following special services, if authorized by **Owner**:

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I. *EM* (continued)

Project Manager. The Engineer will provide visits by the *Project Manager* or a competent representative of the Engineer to the site of construction at least twice a month for the purpose of monitoring the Contractor's progress and conformance to the construction contract plans and specifications. In the capacity of site inspection, the Engineer will issue instructions from the Owner to the Contractor and the *Resident Engineering Representative*, issuing necessary interpretations and clarifications of construction contract documents, and make recommendations to the Owner as to the acceptability of the Contractor's progress and work.

- (8) **Implement QC/QA Program.** The Engineer will monitor and perform the QC/QA program developed to ensure the quality of the *engineering* services and documents associated with Field Surveying, Shop Drawings, Control of Materials & Equipment, Change Orders, Performance Testing, and As-Built Drawings, more particularly identified under II – Preliminary Engineering, Design, and Construction (**Construction**) in this exhibit. These services shall in all respects combine the application of sound *engineering* principles with a high degree of economy and shall be submitted to the applicable City, County, State, Federal agencies for approval.
- (9) **Change Orders.** When applicable, the Engineer will review and provide recommendations for all change orders developed under II – Preliminary Engineering, Design, and Construction (**Construction**) in this exhibit for purpose of preparing construction contract change orders. These change orders may be required due to actual field conditions encountered or new requirements directed by the Owner. The Engineer will prepare, explain, and submit proposed change orders, when applicable.
- (10) **Final Acceptance.** Following the completion of construction by the Contractor, the Engineer will provide the services required for the final inspection and recommendation for Project acceptance. This will include coordinating the activities required for the inspection for conformance and recordkeeping of the necessary performance tests required by the construction contract specifications. The Engineer will also review and approve all as-built drawings (to show the work as actually constructed), and furnish to the Owner one set of prints of the as-built drawings. *Note: Services to be provided by the Engineer for Items II and III primarily involve the engineering work tasks for the Project.*

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II. PRELIMINARY PROJECT PLANNING & DEVELOPMENT

In general, this will include all *engineering* activities required for the **Advance Project Development**. Primarily, this will involve the research and coordination for the social, economic and environmental impacts, public involvement and preliminary field/reconn/surveying / aerial photography of the **Project**. A summary of the *engineering* activities to be provided by the **Engineer** are listed below. The actual contractual services will be identified in each work authorization as outlined in Article 7.

(1) **Environmental Document Preparation and Public Involvement** *(if required by Federal agencies)*

(a) The **Engineer** shall prepare an environmental document in accordance with the National Environmental Policy Act (NEPA) and the applicable Code(s) of Federal Regulations. The **Engineer** will prepare an environmental document in anticipation of a ***Finding of No Significant Impact (FONSI)***, as identified by the NEPA process. This document will include, at a minimum, the following:

- (i) **project description**
- (ii) **need for project**
- (iii) **alternatives considered**
- (iv) **impacts (socioeconomic, cultural resource, water resource, air quality, noise quality, biological, prime/unique farmland, construction impacts, hazardous materials)**
- (v) **conclusion**
- (vi) **project location map**
- (vii) **preliminary structure and channel locations/layouts**
- (viii) **scanned photographs**

(b) The **Engineer** shall conduct and coordinate all public involvement in accordance with the National Environmental Policy Act (NEPA) and the applicable Code(s) of Federal Regulations.

(c) The **Engineer** shall coordinate with all resource agencies, government entities, and private landowners involved or impacted in the development of the **Project**. This will include individual meetings, newsletters and notices, as required.

(d) The **Engineer** shall coordinate and conduct the following public meetings/hearings:

- (i) **Public Meetings** – These meetings will be scheduled to present the **Project** concept, including preliminary layouts and requirements for the **Project**, for the purpose of obtaining preliminary public comment.
- (ii) **Public Hearing** – After completion / preliminary approval of the environmental document and applicable approval to move the **Project** forward for further processing, a public hearing will be afforded and/or conducted to present the approved draft environmental document and the **Project** layout (schematic) for the purpose of obtaining final public comment.

(e) The **Engineer** shall develop a **Project** coordination and mailing list.

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II. Preliminary Project Planning & Development (continued)

- (f) The **Engineer** shall prepare required presentation materials (including handouts, agenda, and sign-in roster) and exhibits for public meetings and a public hearing.
- (g) The **Engineer** shall prepare and submit a written document summarizing each proceeding: Public Meeting Reports and Public Hearing Report.
- (2) **Field Surveying and Photogrammetry (if not provided by Owner)**
 - (a) **Right of Entry:** It will be the responsibility of the **Engineer** to secure written permission to enter private property for purposes of recon/survey, environmental and engineering investigations. The **Engineer** will, at times, contact the owner prior to any entry onto the owner's property. The property owner will be informed, by the **Engineer**, the name of the primary person of contact during each entry.
 - (b) For the purpose of schematic development, including a geographical information system of the **Project**, a base map background will be provided to the **Engineer** through the **Owner**.
 - (c) The **Owner** shall provide primary **Project** control for field surveying by establishing horizontal and vertical control points, and the **Engineer** shall establish secondary **Project** control to tie ground control to the State Plane Coordinate System.
 - (d) The **Engineer** shall obtain the following photogrammetric products:
 - (i) Contact Prints and Mosaics
 - (ii) Planimetric maps
 - (iii) Contour maps
 - (iv) Cross Sections
 - (v) Digital Terrain Model (DTM)

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III. Preliminary Engineering, Final Design & Construction (continued)

III. PRELIMINARY ENGINEERING, DESIGN & CONSTRUCTION

The services listed below to be provided by the Engineer are a summary of the services; the actual contractual services will be identified in each work authorization as outlined in Article 7 of the Agreement. The services shall be divided into three phases with *engineering* work activities, as follows:

(A) **Preliminary Engineering.** For this phase, the Engineer will ultimately deliver the "*Preliminary Engineering Report*". The "*Preliminary Engineering Report*" shall be based on the Engineer's review and comments of the "*Levee Improvement Study for the Rio Grande River within Hidalgo County*" as prepared by the IBWC as well as the "*Raymondville Drain Outfall Study*" (both to be provided by the Owner). Should the review and comments by the Engineer indicate deficiencies in the "*Levee Improvement Study for the Rio Grande River within Hidalgo County*", "*Raymondville Drain Outfall Study*", or in the Turner, Collie and Braden, Inc. Engineer Report – "*Flood Protection Plan*", dated September 1997, corrections of such deficiencies shall be the responsibility of the Owner, or deemed by the Owner as additional work to be performed by the Engineer and compensated in accordance with Articles 8 and 9 of this Agreement. Subsequently, the Engineer will prepare the "*Preliminary Engineering Report*" in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the Owner; to include preliminary layouts, sketches, and cost estimates for the Project, and to set forth clearly the Engineer's recommendations. Specific *engineering* work activities, tasks, and/or special services to be provided by the Engineer will include:

(1) **Preliminary Field Surveying**

- (a) The Engineer shall establish benchmark identifications, if not already provided by the Owner.
- (b) The Engineer shall obtain data for existing drainage facilities and/or structures, including size, type, and flowline (upstream & downstream) elevations of structures.
- (c) The Engineer shall obtain profiles of intersecting roadways that cross existing and proposed channels.
- (d) The Engineer shall obtain flood plain and cross-sections (along with appropriate overbank data), and establish reach lengths, as required.

(2) **Data Collection**

- (a) The Engineer shall perform site visits for field reconnaissance.
- (b) The Engineer shall identify and obtain data to include, but not be limited to:

Previous Studies:

- (i) Available previous hydraulic and/or engineering studies
- (ii) Previous documentation and/or studies for the International Boundary and Water Commission (IBWC) and for the Federal Emergency Management Agency (FEMA) floodway requirements.

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III. Preliminary Engineering, Final Design & Construction (continued)

Land Records:

- (iii) Parcel mapping
- (iv) Property assessment
- (v) USGS topographic mapping

Property and Facility Management

- (vi) Land acquisition and disposition
- (vii) Building and property inventory

Land Use Planning and Zoning

- (viii) General plan mapping
- (vix) Zoning mapping
- (x) Demographic mapping
- (xi) Economic development
- (xii) Linking to permitting systems
- (xiii) Existing aerial photographs and/or mapping

Engineering

- (xiv) Storm drain mapping
- (xv) Subdivision mapping
- (xvi) Street mapping

Public Safety

- (xvii) Emergency preparedness plans

Environmental Assessment (if required by Federal/State agencies)

- (xviii) Wetland mapping
- (xix) National Pollution Discharge Elimination System (NPDES) permitting
- (xx) Facility mapping
- (xxi) Vegetation mapping
- (xxii) Coastal zone management

Elections

- (xxiii) District Boundary definition

(3) **Geographical Information System**

The **Engineer** shall develop a Geographical Information System (GIS) utilizing Environmental Systems Research Institute, Inc. (ESRI) ArcView with 3-D Analyst and GIS StreamPro, where appropriate to be compatible with the existing GIS being developed in the "*Raymondville Drain Project*". Import the collected data into ArcView for mapping purposes and presentations to facilitate the decision-making and analytical process for the development of the "*Preliminary Engineering Report*". ArcView will also be used to export data to the USACE Hydrologic Center's computer program HEC-River Analysis System (HEC-RAS), which will be used to develop the *engineering* models required for the hydraulic analysis of each lateral channel (and associated tributaries) and the plotting of the resultant floodplains. Specifically, ArcView will be used to export this data to HEC-RAS where it will be combined with the field surveyed channel data in order to construct full flood plain cross sections that reflect accurate channel and overbank data for the HEC-RAS models.

Note: During the performance of the following hydrologic / hydraulic analysis and the development of the alternate solutions and final recommendation, the **Engineer** will address and incorporate any findings of the environmental documentation process.

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III. Preliminary Engineering, Final Design & Construction (continued)

(4) Hydrologic Analysis

- (a) The **Engineer** shall review and comment on the hydrologic analyses of portions of the International Boundary and Water Commission (IBWC) "*Levee System Improvement Study*" for the Rio Grande River within Hidalgo County as well as portions of the Raymondville drainage watershed(s) that are located in Precinct No. 2 and No. 3.
- (b) The **Engineer** shall review and comment on the comparison of peak flow rates, identified in the International Boundary and Water Commission (IBWC) "*Levee System Improvement Study*" for the Rio Grande River within Hidalgo County as well as the Raymondville drainage watershed(s) that are located in Precinct No. 2 and No. 3, with any available data from the National Flood Insurance Program (NFIP) or other studies to determine consistency of results.

(5) Hydraulic Analysis

- (a) The **Engineer** shall review and comment on the hydraulic analysis for each existing and proposed structure location utilizing the HEC-RAS computer program; utilizing Manning's Equation to compute water surface profiles with the inputs of cross-section data, roughness coefficients, and flow rates. Specific steps for the hydraulic analysis are outlined in tasks (b) through (g) below.
- (b) The **Engineer** shall create the terrain Triangulated Irregular Network (TIN), if not provided by the **Owner**. This will be developed from a combination of field survey, aerial photogrammetry, and topographic mapping data in the development of a point table. With this point table, an event theme will be created in ArcView, which will create the terrain TIN with 3-D Analyst.
- (c) The **Engineer** shall create 2-dimensional lines representing the channel centerline, high bank locations, flow path lines, and cross-section locations by locating the various and required poly lines over the terrain TIN develop the watershed layout over the base map
- (d) The **Engineer** shall create the HEC-RAS GIS import file (ASCII text file); this will involve the correlation of the alignment of the cross-sections with the terrain TIN by extracting the elevations from the terrain TIN and creating a 3-dimensional cross-section theme.
- (e) For verification of measured elevations, the **Engineer** shall edit the HEC-RAS GIS import file by selectively replacing the points taken from the terrain TIN at the channel with actual channel points obtained by the field survey.
- (f) The **Engineer** will review and comment on the accuracy of the HEC-RAS modeling of the existing and proposed structures within Precinct No. 2 and No. 3 facilities authorized in work authorizations as outlined in Article 7 of the Agreement, and compare the hydraulic results to the effective FIS and existing 100-year flood levels.
- (g) After the HEC-RAS model is satisfactory and the output deemed acceptable, the **Engineer** shall apply the GIS export function to create the HEC-RAS export file in preparation for the flood plain mapping.

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III. Preliminary Engineering, Final Design & Construction (continued)

(6) Flood Plain Mapping

- (a) Utilizing the HEC-RAS GIS export file, and ArcView GIS StreamPro, the **Engineer** shall map the floodplain over the terrain TIN.
- (b) The **Engineer** shall compare the results by placing the resulting floodplain mapping over the existing Flood Insurance Rate Map (FIRM): scan the FIRM and bring into ArcView an image for this comparison.

(7) Alternate Solutions and Recommendations

- (a) The **Engineer** shall prepare preliminary cost estimates for each alternate solution and final recommendation.
- (b) The **Engineer** shall summarize each alternate solution in sufficient detail to indicate clearly the problems involved in order for the **Owner** to make the appropriate comparisons to the **Engineer's** final recommendations and provide the approval for the final design of the **Project**.
- (c) The **Engineer** shall provide a formal and clearly outlined recommendation regarding the final design of the **Project**.

(8) Final Report

The **Engineer** shall prepare five (5) bound, color copies of the final "*Preliminary Engineering Report*", including all attachments, exhibits, preliminary layouts, sketches, profiles, and cost estimates.

(B) Final Design. After the **Owner** has approved the **Engineer's** final recommendations as shown in the "*Preliminary Engineering Report*" and the recommendations meet all Federal, State, and County regulations and requirements (including permitting), the **Engineer** will perform all required *engineering* activities to provide the **Owner** with a complete and approved set of plans, specifications, and estimate (PS&E) for each phase of construction of the **Project**. Specific *engineering* activities, tasks, and/or special services to be provided by the **Engineer** will include:

(1) Right-of-Way Data (Special Services)

The **Engineer** shall provide a right-of-way (ROW) map to the **Owner** that properly describes the ROW the **Owner** is to acquire. All procedures and tasks involved in the development of the ROW map will be in accordance with the **Owner's** local operating procedures and the Texas Board of Professional Land Surveying Practices Act. Individual activities and/or requirements include:

- (a) Abstracting – The **Engineer** shall perform a preliminary title search and determine ownership information.
- (b) Surveying – The **Engineer** shall obtain the required survey data needed to establish existing and proposed right-of-way lines, channel centerline alignment, private property lines, county and/or city limits, and any topographic information not clearly indicated by the aerial photogrammetry.
- (c) The **Engineer** shall prepare the ROW map.

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III. Preliminary Engineering, Final Design & Construction (continued)

- (d) The **Engineer** shall prepare field note descriptions on 8-1/2 x 14" sheets, signed and sealed by a Registered Professional Land Surveyor, for each parcel of land to be acquired as shown on the ROW map.
- (e) The **Engineer** shall prepare parcel plats for each parcel of land to be acquired as shown on the ROW map. All parcel plats will be prepared on 8-1/2" x 14" sheets and signed and sealed by a Registered Professional Land Surveyor.
- (f) Any revisions required to the ROW map, and associated documents, shall be made by the **Engineer** promptly, and at no additional cost or expense to the **Owner**. The **Engineer** shall immediately furnish such revised right-of-way map, and associated documents, to the **Owner** at no additional cost or expense to the **Owner**.

(2) **Design Field Surveying (Special Services)**

The **Engineer** shall perform field surveys and provide field layouts and/or information necessary to collect information required in the final design of the **Project**. This may include, but not be limited to, additional channel sections for the determination of final earthwork, roadway cross sections and profiles for intersecting roadways, soil bore staking, and right-of-way staking.

(3) **Geotechnical Investigations (Special Services)**

The **Engineer** shall perform geotechnical investigations and testing for the purpose of foundation studies and design for any pavement, retaining walls, bridges, and/or miscellaneous structures that may be required for final design.

(4) **Permitting**

The **Engineer** shall furnish the necessary *engineering* data required to apply for regulatory permits from local, State, or Federal authorities.

(5) **Levee/Channel/Drainage Design**

The **Engineer** shall perform levee / channel / drainage design for the proposed improvements to existing levees and/or channels or facilities within the **Project**. The design of levee / drainage improvements shall conform to the **Project** design criteria, and when possible, the standard designs required by the **Owner** (City, County, or State) of any associated roadways. These designs shall in all respects combine the application of sound *engineering* principles with a high degree of economy, and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval.

(6) **Roadway Design**

The **Engineer** shall perform roadway design for any intersecting roadway approaches to the proposed improvements to the existing levees/channels and/or proposed levees/channels of the **Project**. The design of these roadways shall conform to the **Project** design criteria, and when possible, the standard designs required by the **Owner** (City, County, or State) of the associated roadway. These designs shall in all respects combine the application of sound *engineering* principles with a high degree of economy, and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval.

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III. Preliminary Engineering, Final Design & Construction (continued)

(7) Bridge Design

- (a) The **Engineer** shall perform bridge design required for any roadway crossings to the proposed improvements to the existing channels and/or proposed channels of the **Project**. The design of these bridges shall conform to the **Project** design criteria required by the **Owner** (City, County, or State), of the associated bridge structure and/or roadway, and the requirements set forth by the American Association of State Highway and Transportation Officials (AASHTO), "Standard Specifications for Highway Bridges". These designs shall in all respects combine the application of sound *engineering* principles with a high degree of economy, and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval.
- (b) Prior to performing structural detailing, the **Engineer** shall provide a bridge layout to the governing entity of the associated bridge structure and/or roadway for approval. Each bridge layout will include the required information set forth by the governing entity.

(8) Plans, Specifications & Estimates (PS&E)

- (a) The **Engineer** shall prepare contract drawings, specifications and estimates for construction of the **Project** or portions of the **Project** as authorized by the **Owner**. These documents shall in all respects combine the application of sound *engineering* principles with a high degree of economy, and shall be submitted to the applicable City, County, State, and/or Federal agencies for approval.
- (b) All final plan sheets shall be developed, by the **Engineer**, on 11" x 17" reproducible, 4 mil, double-matte, white, opaque film.
- (c) Graphics files shall be developed by the **Engineer** in Microstation design file format, and must plot consistent with the reproducible plots submitted.
- (d) **Plan Sheets.** Plan sheets developed by the **Engineer** shall include, but not be limited to, title sheet, typical sections, sequence of construction, traffic control (as applicable), specification data (including schedules for minimum sampling and testing), estimate and quantity, plan-profile, channel details, roadway details (as applicable), bridge and culvert details, hydraulic details, and standards. (Standards may be used from governing entities, but must be signed and dated by the **Project Engineer** of responsible supervision as being applicable to the **Project**.)
- (e) **Specifications.** Whenever possible, the **Engineer** shall use the Texas Department of Transportation's 1993 Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. Other specifications may be developed by the **Engineer**, but must incorporate, to the extent possible, references to standard requirements of AASHTO design and AASHTO testing procedures.
- (f) **Estimates.** The **Engineer** shall prepare detailed cost estimates and proposals of authorized construction, which shall include summaries of bid items and quantities based, insofar as practicable, on the unit price system of bidding. The **Engineer** shall not be required to guarantee the accuracy of those estimates.

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III. Preliminary Engineering, Final Design & Construction (continued)

(C) **Construction Phase Services.** The Engineer shall provide *engineering* services for each authorized construction contract of the Project. Specific *engineering* work activities, tasks, and/or special services to be provided by the Engineer will include:

(1) **Construction Bidding**

The Engineer shall prepare the documents for all necessary copies of approved plans, specifications, notices to bidders, and proposals.

Note: Services for assistance in advertising for each authorized construction contract for the Project, opening and tabulation of bids, recommendations to the Owner as to the proper action on all bid proposals received, and the preparation of formal contract documents for the award of each construction contract will be performed by the Engineer.

(2) **Project Site Representation**

(a) In general, the Engineer shall provide the *engineering support and data* required for consultation and advisement to the Owner, and to protect the Owner against defects and deficiencies in the work of the Contractor.

(b) **Daily and Weekly Reports.** The Engineer shall provide the *engineering support and data* required to monitor the Contractor's progress with daily and weekly reports as outlined in the "*Construction Management Policy & Procedures Manual*" developed and more particularly identified under I – Engineering Management in this exhibit. This information will be utilized for the development of the *monthly progress report* to be provided to the Owner as identified under I – Engineering Management in this exhibit.

(c) **Contractor Payment.** The Engineer shall take measurements and calculate quantities, in accordance with the construction contract specifications, of those items of work accepted and conforming to the construction contract specifications, for the preparation of the monthly and final estimates for payment to the Contractor as identified and performed under I – Engineering Management in this Exhibit. *Note:* The Engineer is not responsible for actual payments to the Contractor.

(d) The Engineer will provide Project site representation of the authorized construction contract as follows:

(i) **Project Engineer.** The Engineer will provide visits by the *Project Engineer* or a competent representative of the Engineer to the site of construction at least three times each week for the purpose of monitoring the Contractor's progress and conformance to the construction contract plans and specifications.

(ii) **Resident Engineer.** If authorized by the Owner, the Engineer will furnish the services of a *Resident Engineer* and/or construction representative(s) for continuous on-the-site representation.

(3) **Miscellaneous Technical Activities**

(a) **Construction Field Surveying.** The Engineer shall perform all field surveys and field layouts, including construction staking and right-of-way staking.

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III. Preliminary Engineering, Final Design & Construction (continued)

- (b) **Shop Drawings.** The Engineer shall review and check all shop or working drawings furnished by the Contractor.
 - (c) **Control of Materials & Equipment.** The Engineer shall provide inspection of all materials and equipment furnished/used by the Contractor as follows:
 - (i) Review and record all laboratory, shop and mill tests of materials and equipment for compliance with the construction contract specifications.
 - (ii) Observe and/or perform Project record testing and/or independent assurance testing as outlined in the construction contract specifications.
 - (d) **Change Orders.** When applicable, the Engineer will prepare the *engineering* data, including plan sheet drawings, specifications, and estimates, for the preparation of construction contract change orders, which may be required due to actual field conditions encountered or new requirements directed by the Owner.
- (4) **Final Acceptance**
- (a) **Performance Testing.** Following the completion of construction by the Contractor, the Engineer shall provide the *engineering* support and data required for the initial operation of the Project. This will include inspection for conformance and recordkeeping for the necessary performance tests required by the construction contract specifications. The Engineer will provide this inspection with either the *Project Engineer* or *Resident Engineer*, as directed by the Owner.
 - (b) **As-Built Drawings.** The Engineer shall develop as-built drawings to show the work as actually constructed.

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EXHIBIT "B1"
Project Description

The development and implementation of the Levee System Improvement Project within Hidalgo County, Texas (incorporated herein by reference as the "Project") involves advance planning, preliminary engineering and design, final design and plans, specifications, and estimates (PS&E), right-of-way map preparation, and construction phase services and inspection of proposed improvements. The proposed improvements include approximately all of the levee system within Hidalgo County, Texas. Also included along with the levee system improvements, are the proposed improvements involving associated facilities such as bridges, culverts, headwalls, utility crossings, and downdrains.

The Project is located in Hidalgo County. The Project will consist of all the levee system within Hidalgo County, Texas.

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EXHIBIT "B1"
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EXHIBIT "C"
Work Schedule

A detailed work schedule for each **Work Authorization**, identified and more particularly described in Article 7 of this Agreement, shall be prepared by the **Engineer** to be submitted and approved by the **Owner** in writing for each **Work Authorization**. The work schedule will provide specific work sequence and definite review times by the **Owner** and the **Engineer** of the work performed.

The **Engineer** will diligently pursue the completion of each **Work Authorization** as defined by the milestones and deliverable due dates outlined in each **Work Authorization's** associated work schedule.

The **Engineer** will inform the **Owner** (in reasonable advance of the delay) should the **Engineer** encounter delays that would prevent the performance of all work in accordance with the established work schedule.

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EXHIBIT "D"
ENGINEER'S Contract Rate Schedule

Dannenbaum Engineering Company - McAllen, LLC

LABOR:

Job Description	Contract Rate** 2006	Contract Rate** 2007	Contract Rate** 2008	Contract Rate** 2009	Contract Rate** 2010	Contract Rate** 2011	Contract Rate** 2012	Contract Rate** 2013	Contract Rate** 2014
Engineering									
Principal (QC/QA) (VIII)	\$319.61	\$335.60	\$352.38	\$369.99	\$388.49	\$407.92	\$428.31	\$449.73	\$472.22
Project Manager (VII)	\$203.96	\$214.16	\$224.87	\$236.11	\$247.92	\$260.31	\$273.33	\$287.00	\$301.35
Sr. Engineer (V)	\$189.08	\$198.53	\$208.46	\$218.88	\$229.83	\$241.32	\$253.38	\$266.05	\$279.36
Project Engineer (III) / (IV)	\$166.15	\$174.45	\$183.18	\$192.34	\$201.96	\$212.05	\$222.65	\$233.79	\$245.47
Engineer (I) / (II)	\$160.69	\$168.72	\$177.16	\$186.02	\$195.32	\$205.08	\$215.34	\$226.11	\$237.41
Sr. Engineering Designer (III)	\$133.13	\$139.78	\$146.77	\$154.11	\$161.82	\$169.91	\$178.40	\$187.32	\$196.69
Environmental Scientist	\$121.55	\$127.63	\$134.01	\$140.71	\$147.75	\$155.13	\$162.89	\$171.03	\$179.59
Engineering Designer (I) / (II)	\$114.11	\$119.81	\$125.80	\$132.10	\$138.70	\$145.63	\$152.92	\$160.56	\$168.59
CADD Operator (I) / (II)	\$80.15	\$84.16	\$88.37	\$92.79	\$97.42	\$102.30	\$107.41	\$112.78	\$118.42
Secretary	\$72.21	\$75.82	\$79.62	\$83.60	\$87.78	\$92.17	\$96.77	\$101.61	\$106.69
Surveying									
Reg. Public Land Surveyor	\$159.59	\$167.57	\$175.94	\$184.74	\$193.98	\$203.68	\$213.86	\$224.55	\$235.78
Project Supervisor SIT	\$133.07	\$139.73	\$146.71	\$154.05	\$161.75	\$169.84	\$178.33	\$187.25	\$196.61
Survey Technician	\$104.19	\$109.40	\$114.87	\$120.61	\$126.64	\$132.97	\$139.62	\$146.60	\$153.93
Abstractor	\$83.24	\$87.40	\$91.77	\$96.36	\$101.18	\$106.24	\$111.55	\$117.13	\$122.98
2-man Survey Crew	\$137.26	\$144.12	\$151.33	\$158.90	\$166.84	\$175.18	\$183.94	\$193.14	\$202.80
3-man Survey Crew	\$164.82	\$173.06	\$181.72	\$190.80	\$200.34	\$210.36	\$220.88	\$231.92	\$243.52
4-man Survey Crew	\$203.41	\$213.58	\$224.26	\$235.47	\$247.25	\$259.61	\$272.59	\$286.22	\$300.53
Construction Representative	\$83.24	\$87.40	\$91.77	\$96.36	\$101.18	\$106.24	\$111.55	\$117.13	\$122.98
Construction Manager	\$138.36	\$145.28	\$152.55	\$160.17	\$168.18	\$176.59	\$185.42	\$194.69	\$204.43

**These are the rates to be determined for each work authorization

NON-LABOR:***

Mileage	****
Car Rental	****
Lodging (in state)	****
Meals	****
Air Travel	at cost
Overnight Carrier cost	\$20/letter
GPS Equipment	\$475/day
Copies (8 1/2 x 11)	\$.12/ea
Bond Plots	\$0.80/sq.ft.
Color Plots	\$1.70/sq.ft.
Mylar Plots	1.60/sq.ft.

***These are the anticipated non-labor rates to be used to negotiate purchase orders for special or excluded services, and/or additional work; and may be re-negotiated on a yearly basis. Other non-labor rates may be determined at time of negotiation at the rates authorized by the Hidalgo County Drainage District No. 1.

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HCDD 00279

EXHIBIT "D1"
Fee Breakdown

For and in consideration of the *Basic Services* as more particularly identified in EXHIBIT "B" attached to this Agreement and to be rendered by the **Engineer**, the **Owner** shall pay the **Engineer** the **Basic Services Fee** as defined in Article 5.1 of this Agreement, and as more particularly identified as follows:

Basic Services Fee = 9% of the construction cost of the **Project**

Whereas, **Engineering Fee** is the compensation to the **Engineer** for *Basic Services* provided by the **Engineer** under I – Engineering Management, II – Preliminary Project Planning & Development and III – Preliminary Engineering, Design and Construction, both of which are more particularly described in EXHIBIT "B" attached to this Agreement; and,

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EXHIBIT "D2"

Funding Source Incentive

In accordance with Article 5.3 of this Agreement, the Owner shall provide an incentive opportunity to the Engineer in consideration for services rendered regarding the corporate sponsorship performed by the Engineer for obtaining funding from potential funding sources for the development and construction of the Project (identified and more particularly described in EXHIBIT "B1" attached to this Agreement). This funding source incentive fee shall be considered a special service as outlined in Article 5.2.

The Owner will increase the Basic Services Fee, as identified in EXHIBIT "D1" attached to this Agreement, for compensation to the Engineer, from nine percent (9.%) up to a maximum of nine and one-half percent (9.50%) of the construction cost of the Project for obtaining funding from potential funding sources for Project development and construction. The basis of compensation will be as follows:

<u>(Funding Obtained / Construction Cost) %</u>	<u>Increase <i>EM</i> Fee up to:</u>
00.01% – 12.50%	9.0625%
12.51% – 25.00%	9.1250%
25.00% – 37.50%	9.1875%
37.51% – 50.00%	9.2500%
50.01% – 62.50%	9.3125%
62.51% – 75.00%	9.3750%
75.01% – 87.50%	9.4375%
87.51% – 100.00%	9.5000%

Payments to the Engineer in meeting the incentive requirements stated above will be made, in accordance with the terms and provisions of Article 6 of this Agreement, by the Owner, upon presentation of a Request for Payment by the Engineer. Previous payments made to the Engineer for the Basic Services Fee will be ultimately reconciled to the increased fee for Basic Services Fee as obtained through these incentive requirements, and the amount of reconciled payment to the Engineer for the increased fee for Basic Services Fee shall be applied in the next applicable Request for Payment by the Engineer.

Hidalgo County Drainage District No. 1 / Dannenbaum Engineering Company – McAllen, LLC
"Levee System Improvements within Hidalgo County, Texas"

EXHIBIT "D2"
Page 1 of 1

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

EXHIBIT "E"
Work Authorization Form

WORK AUTHORIZATION NO. _____

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of Article 7 of the Agreement made by and between the **HIDALGO COUNTY DRAINAGE DISTRICT NO. 1**, acting herein by and through it's **BOARD OF DIRECTORS**, hereinafter called the **OWNER** and **DANNENBAUM ENGINEERING COMPANY – MCALLEN, LLC**, professional engineers of McAllen, Texas, hereinafter called the **ENGINEER**.

PART 1. Scope of Work.

The scope of services to be provided by the **Owner** is identified in **Exhibit "A" – Services to be Provided by the Owner** attached hereto.

The scope of services to be provided by the **Engineer** is identified in **Exhibit "B" – Services to be Provided by the Engineer** attached hereto.

PART 2. Estimated Cost. The estimated professional engineering fee for providing these services under this Work Authorization is \$ _____. This amount is based upon the fee breakdown included as **Exhibit "D"** utilizing the contract rates established in **Exhibit "D"** of said agreement and attached hereto.

PART 3. Payment. Compensation and payment to the **Engineer** for the services established under this Work Authorization shall be made in accordance with Articles 5, 6, and 7 of the **Agreement**.

Hidalgo County Drainage District No. 1 / Dannenbaum Engineering Company – McAllen, LLC
"Levee System Improvements within Hidalgo County, Texas"

EXHIBIT "E"
Page 1 of 2

PART 4. Period of Service. This Work Authorization shall become effective on the date of final acceptance of the parties hereto.

PART 5. Responsibilities and Obligations. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

PART 6. Acceptance and Acknowledgement. This Work Authorization is hereby accepted and acknowledged as indicated below and effective as of the ____ day of _____, 20____.

ENGINEER:
DANNENBAUM ENGINEERING COMPANY –
MCALLEN, LLC

BY: _____
Louis H. Jones, Jr., P.E., President

OWNER:
HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

BY: _____
Godfrey Garza, District Manager

ATTACHMENTS:

EXHIBIT "A" - Services to be Provided by the Owner
EXHIBIT "B" - Services to be Provided by the Engineer
EXHIBIT "C" - Work Schedule
EXHIBIT "D" - Estimated Cost Proposal

Hidalgo County Drainage District No. 1 / Dannenbaum Engineering Company – McAllen, LLC
"Levee System Improvements within Hidalgo County, Texas"

EXHIBIT "E"
Page 2 of 2

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

EXHIBIT "F"
Supplemental Agreement Form

SUPPLEMENTAL AGREEMENT NO. _____
TO AGREEMENT FOR PROFESSIONAL SERVICES

THIS SUPPLEMENTAL AGREEMENT is made pursuant to the terms and conditions of Section 4 of the Agreement made by and between the **HIDALGO COUNTY DRAINAGE DISTRICT NO. 1**, acting herein by and through it's **BOARD OF DIRECTORS**, hereinafter called the **OWNER** and **DANNENBAUM ENGINEERING COMPANY – MCALLEN, LLC**, professional engineers of McAllen, Texas, hereinafter called the **ENGINEER**.

WITNESSETH

WHEREAS, the **OWNER** and the **ENGINEER** executed the Agreement on the ____ day of _____, 200__ concerning engineering and related services for the Preliminary Engineering, Final Design and Construction of the facilities for the "Levee System Improvements within Hidalgo County, Texas" (hereinafter referred to as the "Project"); and,

WHEREAS, Section _____ of the Agreement, _____ *(Section Title)* establishes _____; and,

WHEREAS, it has become necessary to amend the contract to _____

NOW, THEREFORE, premises considered, the **OWNER** and **ENGINEER** agree that said Agreement is amended as follows:

I. Section _____ of the Agreement, _____ *(Section Title)* is revised to _____

Hidalgo County Drainage District No. 1 / Dannenbaum Engineering Company – McAllen, LLC
"Levee System Improvements within Hidalgo County, Texas"

EXHIBIT "F"
Page 1 of 2

IN WITNESS WHEREOF, the **ENGINEER** and the **OWNER** have caused this **Supplemental Agreement No. ____** to be effective as of the ____ day of _____, 200.

ENGINEER:
DANNENBAUM ENGINEERING COMPANY –
MCALLEN, LLC

BY: _____
Louis H. Jones, Jr., P.E., President

OWNER:
HIDALGO COUNTY

BY: _____
Godfrey Garza, District Manager

ATTACHMENTS:
(as required)

Hidalgo County Drainage District No. 1 / Dannenbaum Engineering Company – McAllen, LLC
"Levee System Improvements within Hidalgo County, Texas"

EXHIBIT "F"
Page 2 of 2

Exhibit R
Page 60 of 63

HCDD 00285

**** The Engineer will provide the County with a completed Certificate of Insurance upon execution of this Agreement. ****

EXHIBIT "G"**Certificate of Insurance Form – Hidalgo County**
**Hidalgo County
CERTIFICATE OF INSURANCE**


NOTE: Copies of the endorsements listed below are not required as attachments to this certificate.

The named Engineer, Consultant or Contractor shall not commence work until he/she has obtained the minimum insurance specified in Section II, below, and obtained the following endorsements: Hidalgo County as an Additional Insured for coverages 3 and 4, and a Waiver of Subrogation in favor of the Hidalgo County under coverages 2,3 and 4. Only certificates of insurance published by Hidalgo County are acceptable as proof of insurance; commercial carriers' certificates are unacceptable.

SECTION I IDENTIFICATION DATA

1.1 Insured Name (of Engineer, Consultant or Contractor)

1.2 Street/Mailing Address

1.3 City

1.4 State

1.5 Zip

1.6 Phone Number

Area Code ()

SECTION II TYPE OF INSURANCE

Type	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability Not Less Than:
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2. WORKERS' COMPENSATION

2.1 _____ 2.2 _____ 2.3 _____

Statutory Texas

Endorsed with a Waiver of Subrogation in favor of Hidalgo County

3. COMMERCIAL GENERAL LIABILITY

Bodily Injury/Property Damage

3.1 _____ 3.2 _____ 3.3 _____

\$1,000,000 combined single limit each claim and in the aggregate

Endorsed with Hidalgo County as an Additional Insured and endorsed with a Waiver of Subrogation in favor of Hidalgo County.

4. TEXAS BUSINESS AUTOMOBILE POLICY

A. Bodily Injury

4.1 _____ 4.2 _____ 4.3 _____

\$250,000 ea. Person

\$500,000 ea. Claim

B. Property Damage

4.4 _____ 4.5 _____ 4.6 _____

\$100,000 ea. Claim

Endorsed with Hidalgo County as an Additional Insured and endorsed with a Waiver of Subrogation in favor of Hidalgo County.

5. PROFESSIONAL LIABILITY

5.1 _____ 5.2 _____ 5.3 _____

\$1,000,000 combined single limit each claim in the aggregate

SECTION III CERTIFICATION

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the insurance company named below. Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the undersigned agent or his/her company has sent written notices by certified mail to the Engineer, Consultant or Contractor and Hidalgo County. THIS IS TO CERTIFY to Hidalgo County that the insurance policies above meet all the requirements stipulated above and such policies are in full force and effect.

6.1 Name of Insurance Company

7.1 Name of Authorized Agent

6.2 Company Address

7.2 Agent's Address

6.3 City

6.4 State

6.5 Zip

7.3 City

7.4 State

7.5 Zip

7.6 Authorized Agent's Phone No.

Area Code ()

Original Signature of Authorized Agent

Date

Hidalgo County
CERTIFICATE OF INSURANCE (Back of Form)

Hidalgo County
Certificate of Insurance Requirements

Only the Hidalgo County Certificate of Insurance (COI) forms are acceptable as proof of insurance.

The named insured on the COI and the name of the Engineer, Consultant, or Contractor, as it appears on the Agreement for Professional Services, must be the same.

The signature of the agent must be original in ink; stamped/typed/printed signatures are unacceptable.

WORKER'S COMPENSATION

The following requirements apply to WORKER'S COMPENSATION coverage:

- If the Engineer, Consultant, or Contractor has any employees, in addition to himself/herself, then the Engineer, Consultant, or Contractor is required to have workers' compensation insurance.
- The word STATUTORY, under limits of liability, means that the benefits allowed under the Texas Workers' Compensation Law will be paid by the insurer.
- Relatives of the Engineer, Consultant or Contractor (spouse, sons, daughters) must be covered by workers' compensation insurance.

GROUP HEALTH insurance may not be substituted for WORKERS' COMPENSATION insurance.

COMMERCIAL GENERAL LIABILITY

COMMERCIAL GENERAL & PROFESSIONAL LIABILITY insurance is usually sold in only Combined Single Limit coverage. In the event the coverages are specified separately, they must be at least these amounts:

Bodily Injury	-	\$750,000 each claim
Property Damage	-	\$250,000 each claim \$1,000,000 aggregate

Note: This coverage was previously known as Comprehensive General Liability insurance. Some older policies may still carry this identification. This is acceptable.

MANUFACTURERS' AND CONTRACTORS' LIABILITY insurance is not an acceptable substitute for COMMERCIAL GENERAL LIABILITY insurance.

TEXAS BUSINESS AUTOMOBILE POLICY

The coverage amount for a *TEXAS BUSINESS AUTOMOBILE POLICY* may be shown as a minimum of \$1,000,000 Combined Single Limit for bodily injury and property damage by a typed or printed entry and deletion of the specific amounts listed for Bodily and Property Damage.

BASIC AUTOMOBILE LIABILITY insurance is not an acceptable substitute for a TEXAS BUSINESS AUTOMOBILE POLICY or COMPREHENSIVE AUTOMOBILE LIABILITY insurance.